# Customs Bulletin

**Regulations, Rulings, Decisions, and Notices concerning Customs and related matters**

# and Decisions

**of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade**

Vol. 17 APRIL 6, 1983 No. 14

*This issue contains*



THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

## NOTICE

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# U.S. Customs Service

## *Treasury Decisions*

(T.D. 83-75)

### Bonds

Approval and discontinuance of consolidated aircraft bonds (air carrier blanket bonds), Customs Form 7605

The following consolidated aircraft bonds have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: March 16, 1983.

| Name of principal and surety | Date term commences | Date of approval | Filed with district director/area director/amount |
|---|---|---|---|
| Aeronaves de Mexico, S.A., 8390 N.W. 53rd St., Miami, FL; American Casualty Co. of Reading, PA (PB 9/29/80) D 12/15/82 [1] | Sept. 29, 1982 | Dec. 15, 1982 | Miami, FL $100,000 |
| The foregoing principal has not been designated as a carrier of bonded merchandise. | | | |
| Linea Aerea Nacional De Chile, 7855 N.W. 12th St., #118, Miami, FL; Washington International Ins. Co. (PB 12/14/72) D 12/14/82 [2] | Dec. 14, 1982 | Dec. 15, 1982 | Miami, FL $100,000 |
| The foregoing principal has not been designated as a carrier of bonded merchandise. | | | |

[1] Surety is National Union Fire Ins. Co.
[2] Surety is Sentry Ins. A Mutual Co.

BON-3-01

MARILYN G. MORRISON,
*Director,*
*Carriers, Drawback and Bonds Division.*

(T.D. 83-76)

## Synopses of Drawback Decisions

The following are synopses of drawback rates issued March 31, 1982, to November 10, 1982, inclusive, pursuant to sections 22.1 through 22.5, inclusive, Customs Regulations.

In the synopses below are listed for each drawback rate approved under 19 U.S.C. 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner who issued the rate, and the date on which it was signed.

DRA-1-09
215675

Dated: March 17, 1983.

MARILYN G. MORRISON,
*Director,*
*Carriers, Drawback and Bonds Division.*

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(A) Company: Aegis Textiles
Articles: Bleached, dyed and/or printed piece goods
Merchandise: Imported greige piece goods
Factory: Woodridge, NJ
Statement signed: September 28, 1982
Basis of claim: Used in, less valuable waste
Rate issued by RC: New York, November 8, 1982
Revokes: T.D. 79-197-A

(B) Company: Alta Chemical Corp
Articles: Photographic developers
Merchandise: Imported hydroquinone
Factories: San Diego, CA; Glen Burnie, MD
Statement signed: August 10, 1982
Basis of claim: Used in
Rate issued by RC: Los Angeles, September 2, 1982

(C) Company: Asahipen America, Inc.
Articles: Latex paints
Merchandise: Imported titanium dioxide
Factory: Seattle, WA
Statement signed: July 30, 1982
Basis of claim: Used in
Rate issued by RC: San Francisco, September 3, 1982

(D) Company: Beaver NC Machine Tools, Inc.
Articles: Computer controlled metal working machines
Merchandise: Imported incomplete metal working machines
Factory: Grand Rapids, MI
Statement signed: August 24, 1982
Basis of claim: Used in
Rate issued by RC: New York, September 30, 1982

(E) Company: Biocraft Laboratories, Inc.
Articles: Amoxicillin trihydrate; ampicillin trihydrate; oxacillin sodium monohydrate; cloxacillin sodium monohydrate; all of the foregoing in bulk and finished dosage form
Merchandise: Imported D-(-)-alpha para hydroxyphenylglycine; D-(-)-alpha phenylglycine; D-(-)-alpha para hydroxyphenylglycine methyl acetoacetate; potassium salt (p hydroxy dane salt); D-(-)-alpha phenylglycine methyl acetoacetate; potassium salt (dane salt); methylene chloride
Factories: Waldwick and Elmwood Park (2), NJ
Statement signed: August 3, 1982
Basis of claim: Used in
Rate issued by RC: New York, September 3, 1982

(F) Company: Data General Corp.
Articles: Computer systems, computer subsystems and peripheral computer equipment
Merchandise: Imported 8K and 16K core memory boards, in various configurations and various printed circuit board assemblies
Factories: Southboro, MA; Westbrook, ME; Cary and Apex, NC; Portsmouth, NH; Austin, TX
Statement signed: June 30, 1982
Basis of claim: Appearing in
Rate issued by Acting RC: San Francisco, August, 1982
Revokes: T.D. 75–164–I as amended by T.D. 78–184–I

(G) Company: Fansteel/Pasco Gear & Machine, Inc.
Articles: Rotors with drum hubs
Merchandise: Imported synchronous motors
Factory: Phoenix, AZ
Statement signed: August 18, 1982
Basis of claim: Appearing in
Rate issued by RC: Los Angeles, October 29, 1982

(H) Company: Firmenich Inc.
Articles: Non-alcoholic perfume bases
Merchandise: Imported non-alcoholic aromatic substances in liquid and crystal form

Factory: Plainsboro, NJ
Statement signed: August 5, 1982
Basis of claim: Used in
Rate issued by RC: New York, September 30, 1982
Revokes: T.D. 56328–N

(I) Company: Hamilton Test Systems, Inc.
Articles: Automotive test equipment
Merchandise: Imported electronic diagonostic parts and subassemblies
Factory: Tucson, AZ
Statement signed: September 17, 1982
Basis of claim: Appearing in
Rate issued by RC: Los Angeles, October 18, 1982

(J) Company: Paul Hanson Co., Inc.
Articles: Lamps, chandeliers and decorative accessories
Merchandise: Imported lamp bodies and accessories
Factory: Carlstadt, NJ
Statement signed: September 23, 1982
Basis of claim: Used in
Rate issued by RC: New York, November 8, 1982

(K) Company: Howe Industries, Inc.
Articles: Copper-clad laminates and pre-pregs
Merchandise: Imported polyimide resin
Factory: Van Nuys, CA
Statement signed: September 28, 1982
Basis of claim: Used in
Rate issued by RC: Los Angeles, October 29, 1982

(L) Company: Kay-Fries, Inc.
Articles: Cyanoacetic acid and ethyl cyanoacetate
Merchandise: Imported mono-chloroacetic acid flake
Factory: Stony Point, NY
Statement signed: September 27, 1982
Basis of claim: Used in
Rate issued by RC: New York, November 8, 1982

(M) Company: Kouri's Inc.
Articles: Processed Oriental wool carpets
Merchandise: Imported unprocessed Oriental wool carpets
Factory: Poughkeepsie, NY
Statement signed: May 7, 1982
Basis of claim: Used in
Rate issued by RC: New York, November 3, 1982

(N) Company: McGraw-Edison Co., Wagner Div.
Articles: Brake fluid

Merchandise: Imported isobutyl alcohol
Factory: Berkeley, MO
Statement signed: July 16, 1982
Basis of claim: Used in
Rate issued by RC: New York, November 3, 1982

(O) Company: MatchMaster Dyeing & Finishing Co., Inc.
Articles: Bleached, dyed and/or redyed piece goods
Merchandise: Imported piece goods
Factory: Los Angeles, CA
Statement signed: September 2, 1982
Basis of claim: Used in, less valuable waste
Rate issued by RC: New York, November 8, 1982

(P) Company: Motorola, Inc.
Articles: Auto radio power amplifiers, entertainment radios, computer display monitors, microwave oven controls, microprocessor engine control modules, and sensor control modules
Merchandise: Imported electronic components
Factories: Joplin, MO; Arcade, NY; Sequin, TX
Statement signed: September 10, 1982
Basis of claim: Appearing in
Rate issued by RC: Chicago, September 23, 1982

(Q) Company: Pellerin Milnor Corp. and Milnor International Corp. (a subsidiary of Pellerin Milnor Corp.)
Articles: Milnor commercial laundry washer extractors
Merchandise: Imported commercial laundry machinery parts, manual or electronic
Factory: Kenner, LA
Statement signed: February 17, 1982
Basis of claim: Used in
Rate issued by RC: New Orleans, March 31, 1982
Revokes: T.D. 67–288–I as amended by T.D. 73–50–E and T.D. 77–146–Q

(R) Company: Rhone-Poulenc, Inc.
Articles: Rhonaldehyde (Hydrocinnamaledhyde para-t-butyl-alpha-methyl)
Merchandise: Imported tertiobutylbenzene (TBB)
Factory: New Brunswick, NJ
Statement signed: May 3, 1982
Basis of claim: Used in
Rate issued by RC: New York, September 3, 1982

(S) Company: Rhone-Poulenc Inc.
Articles: Trimipramine maleate
Merchandise: Imported product 0063, a mixture of Trimipramine base and isopropanol

Factory: New Brunswick, NJ
Statement signed: May 3, 1982
Basis of claim: Used in
Rate issued by RC: New York, September 3, 1982

(T) Company: Ricoh Electronics, Inc.
Articles: Photo copiers
Merchandise: Imported knocked down kits of assembly parts for photo copiers
Factory: Irvine, CA
Statement signed: September 12, 1982
Basis of claim: Appearing in
Rate issued by RC: Los Angeles, November 9, 1982

(U) Company: Shieldalloy Corp.
Articles: Manganese and chromium quick-sol briquettes
Merchandise: Imported manganese metal, manganese metal powder, chromium metal, chromium metal powder and chromium oxide
Factory: Newfield, NJ
Statement signed: August 12, 1982
Basis of claim: Used in
Rate issued by RC: Baltimore, September 3, 1982

(V) Company: Southwestern Alloys, Inc.
Articles: Titanium bar and billet
Merchandise: Imported titanium ingot
Factory: Paramount, CA
Statement signed: August 11, 1982
Basis of claim: Used in, less valuable waste
Rate issued by RC: Los Angeles, September 10, 1982

(W) Company: Transcrete, Inc.
Articles: Concrete pumps
Merchandise: Imported modules and diesel engines
Factory: South Gate, CA
Statement signed: September 9, 1982
Basis of claim: Appearing in
Rate issued by RC: Los Angeles, September 21, 1982

(X) Company: United States Steel Corp., U.S.S. Chemical Div.
Articles: Polypropylene pellets
Merchandise: Imported catalysts FT-1, FT-1s, and FT-1ss
Factory: La Porte, TX
Statement signed: June 17, 1982
Basis of claim: Used in
Rate issued by RC: Houston, October 4, 1982

(Y) Company: Van R Dental Products, Inc.
Articles: Reversible hydrocolloid products
Merchandise: Imported agar-agar
Factory: Los Angeles, CA
Statement signed: September 13, 1982
Basis of claim: Appearing in
Rate issued by RC: Los Angeles, October 12, 1982

(Z) Company: Williams & Lane, Inc.
Articles: Generator sets
Merchandise: Imported internal combustion engines
Factory: San Leandro, CA
Statement signed: October 27, 1982
Basis of claim: Appearing in
Rate issued by San Francisco District: November 10, 1982

Arapahoe Chemicals, Inc., operating under T.D. 80–204–C has changed its name to Syntex Chemicals, Inc., Arapahoe Chemicals Div.

Arapahoe Chemicals, Inc., operating under T.D. 82–117–A has changed its name to Syntex Chemicals, Inc.

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(T.D. 83–77)

## Drawback Contract—Fur Skins or Fur Skin Articles

The proposed Customs Regulations revision of Part 22 relating to drawback was published in the Federal Register, August 26, 1982. Section 22.6(a) through (i) of the regulations, relating to general drawback rates is being removed from the revision to the regulations, Part 191. This section is not of sufficient general applicability to be included in the revision. However, no member of the public would be forfeiting any rights and benefits by its removal. As advised in the Notice of Proposed Rulemaking, 47 FR 37568, general drawback contracts would be published as Treasury Decisions designed to take the place of the eliminated section. The following is one such contract.

File: DRA–1
215672
Dated: March 17, 1983.

MARILYN G. MORRISON,
*Director,*
*Carriers, Drawback and Bonds Division.*

401-205 O - 83 - 2

Drawback Contract Under 19 U.S.C. 1313(a) for Articles Manufactured With the Use of Fur Skins or Fur Skin Articles Imported in a Raw, Dressed, or Dyed Condition

Drawback may be allowed under the provisions of section 313(a), Tariff Act of 1930, upon the exportation of dressed, redressed, dyed, redyed, bleached, blended, or striped fur skins or fur skin articles manufactured or produced by any one or a combination of the foregoing processes with the use of fur skins or fur skin articles, such as plates, mats, sacs, strips, and crosses, imported in a raw, dressed, or dyed condition, subject to the following special requirements:

(1) The records of the manufacturer or producer shall show, as to each lot of fur skins and fur skin articles manufactured or produced for exportation with benefit of drawback, the lot number and the date or inclusive dates of manufacture or production, the quantity, identity, and description of the imported merchandise used, the condition in which imported, the process or processes applied thereto, the quantity and description of the finished articles obtained, and the quantity of imported pieces rejected, if any, or spoiled in manufacture or production.

(2) An abstract of the manufacturing or production records shall be filed with the drawback entry.

(3) The drawback allowance shall not exceed the duty paid, less 1 per centum thereof, on the quantity of imported merchandise used in the manufacture or production of the exported articles, as shown by the abstract of the manufacturing or production records. The quantity of imported merchandise used shall be determined by deducting from the quantity of fur skins or fur skin articles put into manufacture or production the quantity of rejects and spoilage incurred, if any.

(4) Drawback shall not be allowed hereunder when the process performed results only in the restoration of the articles to their condition at the time of importation.

(5) Each manufacturer or producer of articles covered by the above drawback rate shall submit to the regional commissioner where drawback entries will be filed, a statement in duplicate describing the methods used in the manufacture or production of the products involved and setting forth the records it agrees to keep for the purpose of complying with the drawback law and regulations and for providing all the data required for the proper liquidation of certificates of manufacture and drawback entries filed hereunder. If the statement shows that the methods and records described therein enable the manufacturer or producer to comply with the law and regulations, the regional commissioner shall approve the statement and promptly notify the applicant, in writing, of such action.

If drawback entries are to be liquidated at more than one regional office, two additional copies of the statement shall be required

for each additional office. In such case, the regional commissioner at the place first listed in the drawback statement shall approve the statement, if that action is warranted, and promptly notify the applicant, in writing, of such action.

Revised statements covering changes in drawback statements filed under this Treasury Decision shall be handled in accordance with the previously discussed provisions.

The allowance of drawback on articles covered by this Treasury Decision shall be subject to compliance with the applicable provisions of Part 191.

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19 CFR Part 4

(T.D. 83-78)

## Vessels in Foreign and Domestic Trades

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to add Spain to the list of nations which permit vessels of the United States to transport certain articles specified in section 27, Merchant Marine Act of 1920, as amended, between their ports.

The Department of State has furnished satisfactory evidence that Spain places no restrictions on the transportation of certain specified articles by vessels of the United States between ports in that country. This amendment provides reciprocal privileges for vessels registered in Spain.

EFFECTIVE DATE: February 1, 1983.

FOR FURTHER INFORMATION CONTACT: Harold Singer, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5706).

SUPPLEMENTARY INFORMATION:

### Background

Section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. 883) (the "Act"), provides generally that no merchandise shall be transported by water, or by land and water, between points in the United States except in vessels built in and documented under the laws of the United States and owned by U.S. citizens. However, the Act, as amended by Pub. L. 89-194 (79 Stat. 823, T.D. 66-176) and 90-474 (82 Stat. 700, T.D. 68-277), provides that upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State that a foreign nation does not restrict the transportation of certain articles between its ports by vessels of the United States, reciprocal privileges will be accorded to vessels of that nation, and the prohibition against the trans-

portation of those articles between points in the United States will not apply to its vessels.

Section 4.93(b)(1), Customs Regulations (19 CFR 4.93(b)(1)), lists those nations found to extend reciprocal privileges to vessels of the United States for the transportation of empty cargo vans, empty lift vans, and empty shipping tanks. Section 4.93(b)(2), Customs Regulations (19 CFR 4.93(b)(2)), lists those nations found to grant reciprocal privileges to vessels of the United States for the transportation of equipment for use with cargo vans, lift vans, or shipping tanks; empty barges specifically designed for carriage aboard a vessel and certain equipment for use with these barges; certain empty instruments of international traffic; and certain stevedoring equipment and material.

On February 7, 1983, the Department of State advised the Secretary of the Treasury that, effective February 1, 1983, Spain places no restrictions on the transportation of the articles listed in the Act by vessels of the United States between ports in Spain.

By the Treasury Department Order 165–25 the Secretary of the Treasury has delegated authority to the Commissioner of Customs to prescribe regulations relating to sections 4.22, 4.81a(b), 4.93(b)(1) and (b)(2), 4.94(b), and 10.59(f), Customs Regulations, (19 CFR 4.22, 4.81a(b), 4.93(b)(1) and (b)(2), 4.94(b), and 10.59(f). These sections relate to lists of nations entitled to preferential treatment in Customs matters because of reciprocal privileges accorded to vessels and aircraft of the United States. Subsequently, by Customs Delegation Order No. 66 (T.D. 82–201), dated October 13, 1982, the Commissioner delegated this authority to the Assistant Commissioner (Commercial Operations). Authority to grant this exemption and to amend these sections was delegated from the Assistant Commissioner (Commerical Operations), to the Director, Office of Regulations and Rulings, who then re-delegated this authority to the Director, Regulations Control and Disclosure Law Division.

## FINDING

On the basis of the information received from the Secretary of State, as described above, it is determined that the Government of Spain places no restrictions on the transportation of the articles specified in section 27 of the Merchant Marine Act of 1920, as amended, by vessels of the United States between ports in Spain. Therefore, reciprocal privileges are accorded to vessels registered in Spain as of February 1, 1983.

## LIST OF SUBJECTS IN 19 CFR PART 4

Customs duties and inspection, cargo vessels, maritime carriers, vessels.

### REGULATIONS AMENDMENTS

To reflect the reciprocal privileges granted to vessels registered in Spain, Part 4, Customs Regulations (19 CFR Part 4), is amended in the following manner:

### PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

Sections 4.93(b)(1) and (b)(2), Customs Regulations (19 CFR 4.93(b)(1), (b)(2)), are amended by adding "Spain" in appropriate alphabetical order to the list of nations entitled to reciprocal privileges.

(R.S. 251, as amended, sec. 27, 41 Stat. 999, as amended, sec. 624, 46 Stat. 759, sec. 14, 67 Stat. 516, Pub. L. 89-194, 79 Stat. 823, Pub. L. 90-474, 82 Stat. 700 (5 U.S.C. 301, 19 U.S.C. 1322(a), 1624, 46 U.S.C. 883))

### INAPPLICABILITY OF PUBLIC NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS

Because this is a minor amendment in which the public is not particularly interested and there is a statutory basis for the described extension of reciprocal privileges, notice and public procedure pursuant to 5 U.S.C. 553(b)(B) are unnecessary. In accordance with 5 U.S.C. 553(d)(1), a delayed effective date is not required because this amendment grants an exemption.

### INAPPLICABILITY OF REGULATORY FLEXIBILITY ACT

This document is not subject to the provisions of sections 603 and 604 of title 5, United States Code, as added by section 3 of Pub. L. 96-354, the "Regulatory Flexibility Act." That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

### EXECUTIVE ORDER 12291

This amendment does not meet the criteria for a major regulation as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

### DRAFTING INFORMATION

The principal author of this document was James S. Demb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices of the Customs Service and the Departments of State and the Treasury participated in its development.

Dated: March 21, 1983.

B. JAMES FRITZ,
*Director,*
*Regulations Control and Disclosure Law Division.*

[Published in the Federal Register, March 25, 1983 (48 FR 12520)]

# U.S. Customs Service

## *Proposed Rulemaking*

19 CFR Parts 111, 141

**Proposed Customs Regulations Amendments Concerning Powers of Attorney**

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations relating to powers of attorney. The document would: (1) eliminate the requirement that powers of attorney required for resident corporations be supported by a certificate showing the authority of the person who executed the power of attorney; (2) reduce the documentation required in support of powers of attorney executed by nonresident corporations; (3) eliminate the requirement that powers of attorney for sealed documents be under seal; and (4) amend several sections of the regulations to conform with a section which states that powers of attorney for customhouse brokers are not required to be filed with the District Director of Customs.

DATES: Comments must be received on or before May 23, 1983.

ADDRESS: Written comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C 20229.

FOR FURTHER INFORMATION CONTACT: James F. Bartley, Entry, Licensing and Restricted Merchandise Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

SUPPLEMENTARY INFORMATION:

### Background

A power of attorney (a legal instrument authorizing another to act as one's agent or attorney) may be executed for the transaction by an agent or attorney of a specified part or all of the Customs

business of the principal. Sections 141.31 through 141.46, Customs Regulations (19 CFR 141.31–141.46) pertain to powers of attorney. The power of attorney may be executed on Customs Form 5291, or as otherwise provided in section 141.32.

Customs has reviewed its regulations relating to powers of attorney, and has concluded that certain requirements may be eliminated or simplified.

Section 141.38 states in part that when a power of attorney is required for a resident corporation, it shall be executed by a person duly authorized for such purpose, and shall be supported by a certificate showing the authority of such person to execute the power of attorney. Customs believes that the requirement of a certificate of authority is unnecessary; proposed section 141.38 would not contain such a requirement.

Section 141.37 provides that a power of attorney executed by a nonresident corporation shall be supported by filing: a certificate from the proper public officer of the country showing the legal existence of the corporation; a copy of that portion of the charter or articles of incorporation which shows the scope of the business of the corporation and the governing body thereof; and certain proof of the grantor's authority to grant a power of attorney for the corporation. Customs believes that some of these requirements are unnecessary, in part because of section 141.18, Customs Regulations (19 CFR 141.18), which provides that a nonresident corporation shall not enter merchandise for consumption unless it has a resident agent in the state where the port of entry is located who is authorized to accept service of process against such corporation and unless the nonresident corporation files a bond having a resident corporate surety to secure the payment of any increased and additional duties which may be found due. Proposed section 141.37 would require that a power of attorney executed by a nonresident corporation be supported by documentation establishing the authority of the corporation to execute a power of attorney and establishing the authority of the grantor to execute the power of attorney on behalf of the corporation.

Section 141.31(b) provides that if a power of attorney is for the execution of sealed instruments, it shall be under seal. Section 141.39(a) provides in part that, with respect to partnerships, if the power of attorney is for the execution of sealed instruments, it shall be signed and sealed by each partner. Customs has determined that a power of attorney need not be under seal. Accordingly, Customs proposes to delete section 141.31(b), and proposes to delete the part of section 141.39(a) that pertains to sealed documents.

Section 141.44 provides that powers of attorney are to be filed with a district director. Section 141.46 provides an exception to this rule, by stating that a customhouse broker is not required to file a power of attorney with the district director. Section 111.3(b)(1), Cus-

toms Regulations (19 CFR 111.3(b)(1)), makes reference to a customhouse broker filing a power of attorney with the district director, authorizing an employee of the broker to sign Customs documents on behalf of the broker. It is proposed to amend 111.3(b)(1) to provide that such a power of attorney is not required to be filed with the district director, but that proof of its existence must be provided to Customs upon request. Sections 141.34, 141.36 and 141.37 make reference to the filing of the power of attorney with the district director. It is proposed to amend these sections to delete these references, in order that these sections may be consistent with the fact that powers of attorney need not always be filed with the district director (section 141.46).

## COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

## AUTHORITY

These amendments are proposed under the authority of R.S. 251, as amended, section 484, 46 Stat. 722, as amended, section 624, 46 Stat. 759 (19 U.S.C. 66, 1484, 1624).

## REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to these proposals because the regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities, or to impose or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities.

## EXECUTIVE ORDER 12291

Because this document will not result in regulations which will be "major rules" as defined in section 1(b) of E.O. 12291, a regula-

tory impact analysis as prescribed by section 3 of the E.O. is not required.

### DRAFTING INFORMATION

The principal author of this document was Gerard J. O'Brien, Jr., Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

### LISTS OF SUBJECTS IN 19 CFR

Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports.

Part 141

Customs duties and inspection, Imports.

### PROPOSED CUSTOMS REGULATIONS AMENDMENTS

It is proposed to amend Parts 111 and 141, Customs Regulations (19 CFR Parts 111, 141), in the following manner:

### PART 111—CUSTOMHOUSE BROKERS

It is proposed to revise section 111.3(b)(1) to read as follows:

**§ 111.3 Transactions for which license is not required.**

* * * * * * *

(b) *As employee of brokers.* An employee of a broker, acting solely for his employer, is not required to be licensed where:

(1) *Authorized to sign Customs documents.* The broker has authorized the employee to sign Customs documents on his behalf, and has executed a power of attorney for that purpose. The broker is not required to file the power of attorney with the district director, but shall provide proof of its existence to Customs upon request. Only employees who are residents of the United States may be authorized to sign Customs documents; or

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### PART 141—ENTRY OF MERCHANDISE

1. It is proposed to amend section 141.31 by removing paragraph (b).

2. It is proposed to revise section 141.34 to read as follows:

**§ 141.34 Duration of power of attorney.**

Powers of attorney issued by a partnership shall be limited to a period not to exceed 2 years from the date of execution. All other powers of attorney may be granted for an unlimited period.

3. It is proposed to amend section 141.36 by removing the word "filed" and inserting in its place the word "executed".

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4. It is proposed to revise section 141.37 to read as follows:

**§ 141.37 Additional requirements for nonresident corporations.**

A power of attorney executed by a nonresident corporation shall be supported by documentation:

(a) Establishing the authority of the corporation to execute such a power of attorney; and

(b) Establishing the authority of the grantor to execute such a power of attorney on behalf of the corporation.

5. It is proposed to revise section 141.38 to read as follows:

**§ 141.38 Resident corporations.**

A power of attorney shall not be required if the person signing Customs documents on behalf of a resident corporation is known to the district director to be the president, vice president, treasurer, or secretary of the corporation. When a power of attorney is required for a resident corporation, it shall be executed by a person duly authorized to do so.

6. It is proposed to revise section 141.39(a) to read as follows:

**§ 141.39 Partnerships.**

(a) *General.* A power of attorney granted by a partnership shall state the names of all members of the partnership. One member of a partnership may execute a power of attorney in the name of the partnership for the transaction of all of its Customs business.

* * * * * * *

WILLIAM H. RUSSELL,
*Commissioner of Customs.*

Approved: March 7, 1983.
JOHN M. WALKER, Jr.,
*Assistant Secretary of the Treasury.*

[Published in the Federal Register, March 22, 1983 (48 FR 11955)]

# U.S. Customs Service

## *General Notice*

19 CFR Parts 141 and 142

### Withdrawal of Proposed Customs Regulations Amendments Relating to Importations of Certain Large Machines

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws the proposed amendments to the Customs Regulations relating to the importation of large machines. That proposal would have allowed an importer to request in writing that a large machine, which because of its immense size and other factors is imported in separate shipments, be classified and dutiable as a complete machine under its particular item number in the Tariff Schedules of the United States (TSUS). After consideration of the comments received in response to the proposal and further review, Customs has determined to continue its present practice whereby parts or components of a complete machine which are imported in separate shipments are classifiable and dutiable as parts or components, rather than as a complete machine. The action is necessary because of legal and operational objections to the proposal.

EFFECTIVE DATE: (Upon publication in the Federal Register).

FOR FURTHER INFORMATION CONTACT: James A. Seal, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8181).

SUPPLEMENTARY INFORMATION:

#### Background

In response to a petition from a member of the public regarding the tariff classification of Fourdrinier papermaking machines, Customs published a notice in the Federal Register on April 30, 1982 (47 FR 18621), proposing to amend the Customs Regulations relating to the importation of certain large machines, using the Fourdrinier papermaking machine as an exemplar. As proposed, Parts 141 and 142, Customs Regulations (19 CFR Parts 141, 142), would have been amended to allow an importer of very large machine compo-

nents arriving in separate shipments to request in writing before the initial shipment that the entire (assembled) machine be classified under the specific TSUS item for the particular machine. If an importer of a large machine imported in separate shipments chose to request Customs to classify the machine as an entirety, the importer would have had to deposit estimated duties covering the entered value of the entirety at the time of filing the entry summary for the initial shipment.

It was acknowledged that the proposal would have constituted a broad extension of the judicial "doctrine of entireties" due to the unusual circumstances presented by certain large machines, as described in the notice. The purpose of the proposal was to obtain comments on whether the amendment was needed to afford the full meaning and effect to the specific provision in the TSUS for the named large machine.

The present Customs Service practice is to treat large machines imported in several shipments as a series of separate articles for the purpose of tariff classification. The practice is in accord with Customs interpretation of the longstanding judicial "doctrine of entireties," that merchandise imported in more than one shipment cannot be classified as an entirety, but rather that each shipment is classified separately. Tariff classification and duty rate are determined shipment by shipment. As a result, a very large machine imported in several shipments will not be classified under a named provision in the TSUS for the machine. Rather, each part or component will be classified under the TSUS item that most specifically describes the particular part or component.

## Discussion of Comments

A total of 51 comments were received in response to the notice, 45 of which favored the proposal. However, almost all of the commenters who favored the proposal in principle, also noted specific objections—especially relating to the criteria for application of the proposal to a large machine and the deposit of estimated duties on the entire machine when the initial shipment is entered. In addition, other problems identified by commenters included Customs approval of an importer's request to use the procedure, the application of the rule to unliquidated entries, the scope of the proposal in regard to whether large articles or entities other than machines should be covered, the requirement of a single entry summary document for the entire machine, and creation of a procedure to capture necessary import statistics.

Six commenters were opposed to the proposal. One commenter simply made a general objection, while five others gave specific reasons for their opposition. The negative comments focused on two broad areas: assertions that the proposal was legally impermissible due to the doctrine of entireties, and the economic consequences of the proposed action.

Customs and the Treasury Department have carefully reviewed each of the comments. Although the majority of the commenters did favor the proposal in principle, the commenters in opposition point out persuasive administrative and legal impediments to adoption of the proposal. Customs believes those negative comments have considerable merit. First, there would be great difficulty in verifying the total weight (*i.e.,* a minimum of 1,000 tons) of a complete machine at the time the first importation was made. Moreover, inasmuch as it is difficult in many instances to determine what components actually comprise a "complete" machine, it would be administratively impossible to determine when replacement and/or accessory parts are sought to be imported. Second, and more important, the overwhelming weight of legal and administrative precedent concerning the doctrine of entireties and the obligation to classify and assess duty on merchandise in its condition as imported, leads Customs to conclude that the proposal, if adopted, would have been of doubtful legality.

Accordingly, after consideration of the comments received, and further review of the matter, it has been determined to withdraw the proposal.

### DRAFTING INFORMATION

The principal author of this document was Todd J. Schneider, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices and the Treasury Department participated in its development.

WILLIAM VON RAAB,
*Commissioner of Customs.*

Approved: March 3, 1983.
JOHN M. WALKER, JR.,
*Assistant Secretary of the Treasury*

[Published in the Federal Register, March 28, 1983 (48 FR 12727)]

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(19 CFR Part 177)

## Tariff Classification of Bulk Liquid Chocolate

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed change of position and solicitation of comments.

SUMMARY: Customs has been requested by an importer of chocolate to review its position regarding the tariff classification of bulk liquid chocolate imported into the United States for further manufacturing. Specifically, Customs has been requested to classify this merchandise under the provision for sweetened chocolate in bars or blocks weighing 10 pounds or more each, in item 156.25, Tariff Schedules of the United States (TSUS), rather than as it is current-

ly classified, under the provision for sweetened chocolate in any other form, in item 156.30, TSUS.

Because Customs' decision in this matter may have a substantial impact upon both importers and domestic manufacturers, public comments are invited.

DATES: Comments (preferably in triplicate) must be received on or before May 23, 1983.

ADDRESS: Comments may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Lee C. Seligman, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8181).

SUPPLEMENTARY INFORMATION:

## BACKGROUND

As a result of a request for a tariff classification ruling, Customs is reviewing its position regarding the classification of bulk liquid sweetened chocolate, which is imported into the United States in temperature-controlled tank trucks for further manufacturing. Customs' present position is that this merchandise is classifiable under the provision for sweetened chocolate in any other form, in item 156.30, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), at a rate of duty of five percent ad valorem.

It has been represented to Customs that the most economical method of transporting the chocolate from Canada to the United States is in the temperature-controlled tank trucks. If left at room temperature, the chocolate would harden. However, the trucks contemplated for use in transporting the chocolate would maintain sufficient heat during transit to keep the chocolate in a molten state during transportation and transfer in order to facilitate unloading and further processing at the contemplated United States facility. Transport of the chocolate in other than molten form would substantially increase the costs of the contemplated operation, and probably create a result which is economically unfeasible. Customs has been asked to consider classifying this merchandise under the provision for sweetened chocolate in bars or blocks weighing 10 pounds or more each, in item 156.25, TSUS, at a rate of duty of 0.2 cents per pounds, if the merchandise would be solid at room temperature.

It has also been represented to Customs that the legislative history of item 156.25, TSUS, clearly shows that Congress intended the lower rate of duty to apply to all bulk imports of sweetened chocolate for manufacturing use, and that the specification of bars or blocks weighing 10 pounds or more each merely reflects Congress' understanding of the form in which chocolate in bulk for manufac-

turing was transported at the time this provision was originally enacted.

Customs seeks public comment on this proposal, and especially on the following issues:

(1) Does the legislative history of item 156.25, TSUS, *clearly* reveal a Congressional intent to prescribe a lower rate of duty for *all* bulk shipments of sweetened chocolate and not just those in bars and blocks weighing 10 pounds or more each?

(2) If the answer to the previous question is affirmative, is it proper for Customs to ignore the phrase "in bars or blocks weighing 10 pounds or more each" in considering whether liquid chocolate may be classified under item 156.25, TSUS?

(3) If so, how should chocolate in bulk form for manufacturing use be defined?

Although no practice exists (within the meaning of section 177.10(c), Customs Regulations (19 CFR 177.10(c))), Customs' decision in this matter may have a substantial impact upon both importers and domestic manufacturers. Merchandise subject to this decision may be exempt from the quota restraints of items 950.15 and 950.16, TSUS.

## COMMENTS

Before making a determination on this matter, Customs will consider any written comments, preferably in triplicate, timely submitted to the Commissioner of Customs.

This ruling request, as well as all comments received in response to this notice, will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), between the hours of 9:00 a.m. and 4:30 p.m. on normal business days, at the Regulations Control Branch, Room 2426, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

## DRAFTING INFORMATION

The principal author of this document was Gerard J. O'Brien, Jr., Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: March 17, 1983.

JOHN P. SIMPSON,
*Director,*
*Office of Regulations and Rulings.*

[Published in the Federal Register, March 22, 1983 (48 FR 11956)]

# Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the U.S. Customs Service is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Customs Service Decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the U.S. Customs Service. Individuals to whom any of these decisions would be of interest should read the limitations expressed in 19 CFR 177.9(c).

A copy of any decision included in this listing, identified by its date and file number, may be obtained through use of the microfiche facilities in Customs reading rooms or if not available through those reading rooms, then it may be obtained upon written request to the Office of Regulations and Rulings, Attention: Legal Retrieval and Dissemination Branch, Room 2404, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229. Copies obtained from the Legal Retrieval and Dissemination Branch will be made available at a cost to the requester of $0.10 per page. However, the Customs Service will waive this charge if the total number of pages copied is ten or less.

The microfiche referred to above contains rulings/decisions published or listed in the CUSTOMS BULLETIN, many rulings predating the establishment of the microfiche system, and other rulings/decisions issued by the Office of Regulations and Rulings. This microfiche is available at a cost of $0.15 per sheet of fiche. In addition, a keyword index fiche is available at the same cost ($0.15) per sheet of fiche.

It is anticipated that additions to both sets of microfiche will be made quarterly. Requests for subscriptions for the microfiche should be directed to the Legal Retrieval and Dissemination Branch. Subscribers will automatically receive updates as they are issued and will be billed accordingly

Dated:

B. JAMES FRITZ,
*Director,*
*Regulations Control and Disclosure Law Division.*

| Date of decision | File No. | Issue |
|---|---|---|
| 3-1-83 | 105735 | Vessels: the submission, by a vessel owner, of good and sufficient evidence of a casualty to qualify for remission of duty under 19 U.S.C. 1466(d)(1) |
| 2-25-83 | 105886 | Vessels: the transportation of coal by a foreign vessel from a port in the U.S. to a vessel at anchor on the seabed of the outer continental shelf, which is taking on the coal for transportation to a foreign country and is therefore not an installation or other structure within the purview of 43 U.S.C. 1333(a)(1), would not be considered in the coastwise trade of the U.S. and would not be in violation of 46 U.S.C. 883 |
| 2-25-83 | 105929 | Vessels: H.R. 3942, an act to amend the Commercial Fisheries Research and Development Act of 1964 |
| 2-23-83 | 105969 | Instruments of International Traffic: the classification of certain woven polypropylene bags, pallets and slip sheets as IIT (19 CFR 10.41a) |
| 3-11-83 | 105973 | Vessels: pursuant to section 4.80a of the Customs Regulations, a passenger on a foreign vessel will be deemed to have been transported in violation of the coastwise laws if, while on a round trip voyage originating at a U.S. port and touching at only U.S. and nearby foreign ports, the passenger goes ashore while the vessel is at a U.S. port (other than the port of origination) for a period of over 24 hours |
| 2-25-83 | 106017 | Instruments of International Traffic: stainless steel tanks used in the transportation of liquid chemicals and similar to those discussed in T.D. 76-172, may be released as IIT under the procedures set forth in section 10.41a, Customs Regulations |
| 3-7-83 | 106047/ 106029/ 105979 | Vessels: passengers may be carried from British Columbia to Seattle and back to British Columbia on foreign-flag vessel without violation of 46 U.S.C. 289 |
| 2-10-83 | 542798 | Value: quota charges paid by the buyer to the foreign seller are included in transaction value (section 402(b) of the Tariff Act) |
| 2-17-83 | 542985 | Value: sales between selected purchasers; the applicable basis of appraisement of merchandise shipped during the mid 1970's (T.D. 76-118 cited, sections 402(d)(2) and 500 of the Tariff Act) |

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# United States Court of International Trade



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# Decisions of the United States Court of International Trade

(Slip Op. 83-14)

UNITED STATES, PLAINTIFF, *v.* APPENDAGEZ, INC., A.K.A. FADED GLORY, A.K.A. FADED GLORY BY APPENDAGEZ, INC. AND JAMES SHANE, DEFENDANTS

Court No. 81-8-01014

Before RAO, *Judge.*

[1] Entered on duty March 10, 1983.

*On Defendant, James Shane's, Motion To Dismiss the Amended Complaint and Plaintiff's Opposition Thereto*

[Motion denied.]

(Dated March 15, 1983)

*J. Paul McGrath,* Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch (*Francis J. Sailer* at the argument and on the brief), for the plaintiff.

*Peabody & Brown* (*Marcus E. Cohn* at the argument and on the brief and *Peggy A. Nelson* on the brief) and *Doherty, Melahn and Middleton* (*William C. Melahn* on the brief) for the defendant, James Shane.

RAO, *Judge:* This case is before the court on defendant James Shane's motion to dismiss the amended complaint filed by the plaintiff to recover civil penalties pursuant to 19 U.S.C. § 1592, Tariff Act of 1930, § 592, as amended. The motion is grounded on defendant's claim that the court lacks jurisdiction of the subject matter, that is a Section 1592 claim arising prior to the effective date of the Customs Courts Act of 1980, November 1, 1980; that the complaint fails to allege sufficient facts to state a cause of action against defendant James Shane; and that the defendant James Shane is shielded from personal liability because he acted only in his capacity as a corporate officer of Appendagez, Inc. at all times relevant to this action and in all events pertinent thereto.

Although I ruled from the bench during oral argument of the motion that this court has jurisdiction of this case, I shall set forth my reasons for so deciding. Prior to the effective date of the Customs Courts Act of 1980, judicial proceedings for the recovery of monetary penalties or for the forfeiture of merchandise under 19 U.S.C. § 1592 were brought by the United States Attorney General in the appropriate United States district court after referral by the United States Customs Service. However, the Court of International Trade was given exclusive jurisidiction of civil actions to recover penalties commenced by the United States by section 1582 of the Customs Courts Act of 1980:

> The Court of International Trade shall have exclusive jurisdiction of any civil action which arises out of an import transaction and which is commenced by the United States—
>
> (1) To recover a civil penalty under section 592, 704(i)(2), or 734(i)(2) of the Tariff Act of 1930;
>
> (2) To recover upon a bond relating to the importation of merchandise required by the laws of the United States or by the Secretary of the Treasury; or
>
> (3) To recover customs duties.

Although there can be little doubt that the language of this provision is unambiguous, the legislative history of the Act clearly shows that a transfer in jurisdiction from the district courts to the Court of International Trade was desired to be effectuated with no gap in jurisdiction between the courts:

> Section 1582 [House Report No. 96-1235]
>
> Proposed section 1582 grants the Court of International Trade new and exclusive jurisdiction over any civil action arising out of an import transaction and commenced by the United States to: (1) recover a civil fine or penalty or to enforce a forfeiture imposed under section 592 or section 704(i)(2) or section 734(i)(2) of the Tariff Act of 1930; or (2) to recover on a bond relating to the importation of merchandise; or (3) to recover customs duties.
>
> Jurisdiction over this type of civil action presently lies in the federal district courts. However, since each of these actions present (sic) questions which involve the expertise of the court, e.g. questions concerning classification, valuation or markings, the Committee believes exclusive jurisdiction over these actions should lie in the United States Court of International Trade.

Thus, when the Customs Courts Act of 1980 became effective on November 1, 1980, the jurisdiction over these actions was transferred to this court.

Defendant also relies on the holding of this court in *United States v. Digital Equipment Corp.*, 3 CIT 52 (1982) in which the late Judge Richardson considered a motion for partial summary judgment in an action by the government to recover civil monetary penalties under 19 U.S.C. § 1592 for merchandise imported between April 1974 and December 1976 and mislabeled on the invoices as being the growth, production and manufacture of the United States when in fact some parts of the merchandise were of foreign origin.

Judge Richardson dismissed the action stating that "[t]his court does not have jurisdiction over *in rem* penalty issues arising under the former section 1592." [1] In so deciding he relied on the legislative history of the Customs Procedural Reform and Simplification Act of 1978, Pub. L. No. 45-910, 92 Stat. 888, S. Rept. No. 95-778, May 2, 1978 [To Accompany H.R. 8149] at 19, reprinted in 1978 U.S. Code Cong. & Ad. News, 2230, to the effect that:

> The penalty for violation of section 592 would be changed from an in rem penalty, forfeiture of the merchandise, to an in personam penalty, a monetary liability of the importer. However, seizure of the merchandise would be permitted if the Secretary of the Treasury has "reasonable cause to believe: the importer is insolvent, outside U.S. jurisdiction, or that seizure is "necessary" to protect the revenue or prevent the importation of restricted goods. The seized merchandise would, in general, be forfeited to the United States only if the monetary penalty is not paid.

A perusal of the entire section 10 of which the above is a part, beginning on page 17 of the Senate Report, evidences an apprecia-

[1] Presumably, that version of section 1592 in effect during the period of importation, 1974 to 1976, to wit, 19 U.S.C. § 1592 (1976).

tion on the part of Congress that penalties for fraud under section 592 of the Tariff Act of 1930, as amended, could be either in rem or in personam at the time the Customs Procedural Reform and Simplification Act of 1978 was being considered:

> Present law.—Section 592 of the Tariff Act of 1930 (19 U.S.C. 1592) penalizes any person who imports, attempts to import, or aids or procures the importation of merchandise into the United States "by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever," unless that person has "reasonable cause to believe the truth of such statement." Violation of section 592 is penalized by forfeiture of the merchandise or *a payment equal to the value of the merchandise.* The penalty applies to negligent as well as intentional violations and whether or not an underpayment of duties results from the violation. [Italic added.]

Indeed, it is evident that Congress amended section 592 in response to criticism by the importing community as to other matters and not to make it an in personam rather than an in rem proceeding [Senate Report on H.R. 8149, at 2]:

> The bill, as amended by the committee, would amend section 592 of the Tariff Act of 1930, the penalty provision for false and material statements in the Tariff Act. Existing section 592 is strongly criticized by all segments of the importing public because it requires a fixed penalty regardless of the nature of the violation, lacks due process safeguards, and does not permit effective judicial review.
>
> Present law prohibits the importation of goods into the United States "by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or application whatsoever" unless the person has reasonable cause to believe the truth of such statement. The penalty imposed for violation of this provision is forfeiture of the merchandise itself or a fine equal to its domestic value.
>
> The penalty under section 592 applies without regard to the degree of culpability. The penalty of forfeiture value may be applied to a violation occurring as a result of simple negligence. While Customs has procedures for mitigation of a section 592 penalty, the issuance of the original unmitigated claim creates several problems. For example, publicly held corporations must disclose penalty claims as contingent liabilities leading to difficulties involving the corporations' financial relationships. H.R. 8149 would provide different penalties for three different degrees of culpability: fraud, gross negligence, and negligence.
>
> Section 592 also lacks procedural safeguards for the alleged violator and does not permit effective judicial review. The respondent is forced to choose between accepting the mitigated administrative penalty or face a Government suit, in which

> case the claim is for full forfeiture value. The court can only decide whether or not a violation occurred. It cannot change the amount of statutory penalty, domestic value.

House Report No. 95-621 accompanying H.R. 8149 contains similar language. It can be concluded that the changes to § 592 were enacted to effectuate reforms dealing with degrees of culpability, procedural safeguards for the alleged violator and effective judicial review, not to change the proceeding from in rem to in personam.

Case law also requires the conclusion to be drawn that section 592 penalty cases can result in a money judgment against the persons who violate the tariff laws by false invoicing. In *United States* v. *Brown,* 404 F. Supp. 968 (S.D.N.Y. 1975), the government brought an action under 19 U.S.C. § 1592 to recover penalties for the introduction into the commerce of the United States by one Brown and the United States Telephone Company, of imported decorator telephones under invoices which listed unit prices considerably lower than the unit prices for the merchandise submitted for purposes of obtaining letters of credit. The court considered the evidence, including the testimony of the customs import specialist who valued the merchandise, and entered judgment against both defendents for the domestic value of the imported merchandise.

Logic and practical considerations also require the conclusion that a monetary amount is to be demanded alternatively with actual forfeiture of the goods. In many cases, the fraud or negligent conduct is not discovered until well after the merchandise has been sold to third parties or otherwise entered the stream of commerce, and limiting the government to an action against the merchandise only (in rem) would result in the denial of the applicability of the statute where the merchandise is no longer available for seizure. The illogic of such a construction was early recognized in the case of *United States* v. *Leon Rheims Co.,* 246 F. 179 (S.D.N.Y. 1917) where the court, in upholding the complaint filed by the United States against the purchaser, the corporate seller and its president, stated:

> [I]t will appear that for well over a century the forfeiture is confined to the merchandise, or, *if the merchandise cannot be found or seized, then to the value thereof.* [Italic added]

The court held the complaint, which sought to recover a money judgment against the defendants under paragraph H of section III of the Tariff Act of 1913 (predecessor to the current section 592), good.[2]

## II

I shall consider next whether the complaint sufficiently states a cause of action against the defendant James Shane who argues

[2] See also *U.S.* v. *Accurate Mould Co.,* 4 CIT —, Slip Op. 82-65, 546 F. Supp. 567 (Aug. 11, 1982) and *U.S.* v. *Digital Equipment Corp.,* 4 CIT — (Aug. 12, 1982).

that the counts of the complaint charging negligence or gross negligence on his part with respect to the false invoices are insufficient as a matter of law in that they do not specify the acts that constitute such gross negligence or negligence.

Rule 8(a) of the Court of International Trade sets out the requirements for pleadings:

> Rule 8. General Rules of Pleading
> (a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

In keeping with the liberalization of pleading rules in federal courts, Rule 8(f)(1) requires that:

> (1) Each averment of a pleading shall be simple, concise and direct. No technical forms of pleading or motions are required.

The Supreme Court, speaking through Mr. Justice Black, set out the requirements in evaluating the sufficiency of a complaint in *Conley* v. *Gibson,* 355 U.S. 41, 45–46 (1957):

> In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

Considering these rules and this decision, the amended complaint's allegations as to negligence and gross negligence are adequate. Plaintiff alleges, in its various counts, but particularly in Count I, that the defendants filed written declarations with the United States Customs Service that did not set forth dutiable quota charges on the merchandise, and that these written declarations stated that the prices set forth in the entries and documents were true and that all charges upon the merchandise were set forth therein, statements that were both false and material.

If the defendant requires more particularity in order to marshal his defenses, he may file a motion for a more definite statement pursuant to Rule 12(e), pointing out the defects complained of and the details desired. *Cf. United States* v. *76,552 Pounds of Frog Legs,* 423 F. Supp. 329 (S.D. Tex. 1976).

## III

It is defendant James Shane's position that the complaint should be dismissed because 19 U.S.C. § 1592 reaches only individuals

acting in their individual capacities and not individuals acting in their corporate capacities.

While it is true that corporate officers are not liable for the illegal actions of others in the corporation merely by virtue of their positions or offices, they may become liable, however, if they knowingly participate in such actions. *Herm* v. *Stafford,* 466 F. Supp. 439 (W.D. Ken. 1979); *Harlem River Consumers Co-op* v. *Associated Grocers,* 408 F. Supp. 1251 (S.D.N.Y. 1976).

This court, at this stage of the proceedings is unable to determine whether any of defendant James Shane's activities with respect to the false invoices which are the basis for this section 1592 action involved direct participation, some lesser degree of informed participation, or even an omission of a duty to correct false invoices when the falsity and materiality of the representations on the invoices were brought to his attention. As president of Appendagez, Inc. he very likely may have known that the prices which were being paid for the merchandise were higher than those shown on invoices, whether he also knew how the merchandise was being invoiced. This is a matter of fact that cannot be determined on this motion. There were no affidavits filed by defendant James Shane or on his behalf which set out the extent, if any, of defendant James Shane's involvement with the instant invoices. Absent affidavits or other data supporting the conclusory allegations in the brief supporting the motion to dismiss, this court cannot hold as a matter of law that his actions are shielded by his doing business through a corporate form. *Cf. Herm* v. *Stafford, supra.*

Defendant James Shane also argues that he is not a "person" subject to the sanctions imposed by section 592. The legislative history of the Customs Procedural Reform and Simplification Act compels us to decide otherwise. The House Report, *supra,* at 12 states that "[t]he scope of persons potentially affected under this subsection has been derived from the existing language of section 592." The Senate Report employs similar language in saying that "[t]he persons covered and the nature of the offense are intended to remain the same as they are under present law.

The Customs Procedural Reform and Simplification Act's phrase, "no person," in section 592 replaced language in the previous statute that listed the persons who would be held accountable for entering or introducing merchandise into this country by means of false invoices as "any consignor, seller, owner, importer, consignee, agent or other person or persons." No limitation was placed on whether such persons were corporations or natural persons and none can be implied.

We are also guided by the Supreme Court, speaking through Mr. Chief Justice Warren in *United States* v. *Wise,* 370 U.S. 405, 409 (1962):

> No intent to exculpate a corporate officer who violates the law is to be imputed to Congress without clear compulsion; else

> the fines established * * * to deter crime become mere license fees for illegitimate corporate business operations.

We conclude that there is nothing in the Act nor its legislative history to indicate that the Congress intended to restrict the applicability of the penalties to corporations and to exclude from the applicability of the penalties officers of corporations merely because of a claim that they were acting in their corporate capacities.

IV

We note that the plaintiff has conceded that this action is time barred pursuant to 19 U.S.C. § 1621 as to penalties on entries made prior to five years before the commencement of this action. However, it takes the position that its causes of action for the increased customs duties are not time barred. The applicable statutory provision, 19 U.S.C. § 1521, provides that if the appropriate customs officer finds probable cause to believe that there is fraud in the case, he may reliquidate an entry within two years after the date of liquidation or last reliquidation. If there is no probable cause to believe that there is fraud in the case, 19 U.S.C. § 1514(c)(2)(A) applies, and the cause of action is time barred if not brought within 90 days after notice of liquidation or reliquidation.

We cannot determine, from the amended complaint and its attachments, when, if ever, the disputed entries were liquidated or reliquidated, and whether the appropriate customs officer had probable cause to believe there was fraud in the case. Accordingly, this court withholds its decision on whether plaintiff's claim for duties of which it was deprived is time barred, pending further submissions of proofs by the parties.

It is, therefore, the judgment of this court that it has jurisdiction of the subject matter of this case, that the complaint states a cause of action against defendant James Shane, and that the claims on entries made prior to five years from the commencement of this action are time barred.

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(Slip Op. 83-15)

LOWA, LTD., PLAINTIFF, *v.* UNITED STATES, DEFENDANT

Court No. 82-1-00067

Before: RE, *Chief Judge.*

*On Defendant's Motion To Dismiss*

[Motion granted.]

(Decided: March 16, 1983)

*Barnes, Richardson & Colburn (Andrew P. Vance, Leonard Lehman* and *John J. Galvin* on the brief, *Andrew P. Vance* at oral argument) and *Cole & Corrette (John E. Corrette, III, Theodore Sonde* and *Steven H. Levin* of counsel) for the plaintiff.

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*J. Paul McGrath,* Assistant Attorney General, *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office, Commercial Litigation Branch, *(Madeline B. Kuflik* on the brief and at oral argument) for defendant.

RE, *Chief Judge:* In this action, plaintiff seeks an order directing the Customs Service to accept plaintiff's proffered entry papers for an aircraft under item 694.41 of the Tariff Schedules of the United States (TSUS) which provides for entry free of duty.[1] Customs rejected the entry, and informed plaintiff that the aircraft should be entered under item 694.40 which provides for the payment of a 5% ad valorem duty.[2]

The defendant has moved to dismiss the action for lack of jurisdiction contending that the court is without jurisdiction because: (a) plaintiff has failed to exhaust its administrative remedies; (b) plaintiff has failed to state a claim upon which relief may be granted; (c) the action is premature; and (d) the United States has not consented to be sued under the circumstances presented in this case.

Since plaintiff has failed to pursue or exhaust its administrative remedies as prescribed by the pertinent jurisdictional statutory provision, this action must be dismissed.

The facts which give rise to this litigation are not in dispute.

On August 7, 1979, a Boeing 707 aircraft of American registry arrived at Honolulu from New Zealand. While the plane was abroad its interior had been extensively refurbished, and, on August 9, 1979, plaintiff, the owner of the aircraft, sought to file a consumption entry under item 694.40, TSUS. Item 694.40 would impose a 5% ad valorem duty on the value added to the aircraft by the refurbishing. Customs officials, believing that the aircraft had been of American registry at the time the repairs were made, a belief confirmed by plaintiff, refused to release the aircraft until a vessel repair entry was filed pursuant to 19 U.S.C. § 1466. Section 1466 imposes a 50% duty on the expense of repairs made in a foreign country to a vessel documented under the laws of the United States. *See Suwannee Steamship Co.* v. *United States,* 79 Cust. Ct. 19, C.D. 4708, 435 F. Supp. 389 (1977).

On August 10, 1979, plaintiff secured the release of its aircraft by filing a vessel repair entry and posting a $750,000 bond to cover the estimated vessel repair duties. The plane continued its planned

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[1] TSUS (1981)

SCHEDULE 6, PART 6, SUBPART C

| | | |
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| Aircraft and spacecraft, and parts thereof: Civil aircraft; spacecraft; and parts of each of the foregoing: | | |
| 694.41 | Airplanes | Free |

[2] TSUS (1978)

SCHEDULE 6, PART 6, SUBPART C

| | | |
|---|---|---|
| Aircraft and spacecraft, and parts thereof: | | |
| 694.40 | Airplanes | 5% ad val. |

flight across the United States, and since August 10, 1979, plaintiff has enjoyed the uninterrupted use of its aircraft.

On November 5, 1979, plaintiff filed with the district director of Customs a petition seeking relief from the 50% vessel repair duty. Plaintiff claimed that its aircraft was not subject to the duty because it was used solely for corporate and personal purposes, and it was neither licensed to operate, nor did it in fact operate in trade or commerce. In considering this petition, Customs elicited from plaintiff information which established that the aircraft was not documented under the laws of the United States at the time the repairs were made. Because of this newly acquired information, Customs concluded that plaintiff's aircraft was not subject to vessel repair duties, and, on September 17, 1980, notified plaintiff of its decision.

On February 5, 1981, Customs advised plaintiff that it would be required to file an entry summary for its aircraft. By letter dated April 7, 1981, plaintiff requested that the vessel repair entry be liquidated free of duty so that the attendant bond could be terminated. Customs declined, indicating that liquidation was an inappropriate procedure for terminating the bond. Instead, Customs recommended that plaintiff substitute a new entry for the vessel repair entry. This procedure, according to Customs, would allow the cancellation of the vessel repair entry and the invalidation of the bond. Customs also stated that the vessel repair entry and bond would not be canceled until an entry summary with duty was filed.

On May 7, 1981, plaintiff filed with the Customs Service an entry summary entering the aircraft free of duty under item 694.41, TSUS. On January 1, 1980, pursuant to Presidential Proclamation 4707, 3 C.F.R. 87, 139 (1980), item 694.41 superseded item 694.40, TSUS, which contained the 5% duty provision under which plaintiff first sought to enter the aircraft. In rejecting plaintiff's entry, Customs notified plaintiff that the entry should be made under item 694.40, the provision applicable to aircraft during 1979 when plaintiff's airplane had been released into the commerce of the United States.

When informal attempts to reach an agreement failed, plaintiff filed, on July 16, 1981, a protest objecting to the refusal by Customs to accept the entry under item 694.41. Customs responded to plaintiff's protest with a letter which stated that the protest was premature since the rejection of entry papers was not a protestable decision. Plaintiff chose to construe the explanation offered by Customs as a denial of its protest, and, on January 15, 1982 commenced this civil action.

The question presented by defendant's motion to dismiss is whether this court has jurisdiction to review, after imported merchandise has been released into the commerce of the United States, but before liquidation or the payment of estimated duties, a decision by Customs which classifies imported merchandise for the pur-

pose of determining estimated duties. For the reasons which follow, the court holds that it does not have jurisdiction of this action.

It is not questioned that when a jurisdictional issue is raised, "the burden rests on plaintiff to prove that jurisdiction exists." *United States* v. *Biehl & Co.*, 3 CIT 158, 160, 539 F. Supp. 1218 (1982). In this case, plaintiff asserts that the court has jurisdiction of this action under 28 U.S.C. § 1581, subsections (a), (h) and (i). Section 1581 provides in pertinent part:

> (a) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930.
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> * * * * * * *
>
> (h) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review, prior to the importation of the goods involved, a ruling issued by the Secretary of the Treasury, or a refusal to issue or change such a ruling, relating to classification, valuation, rate of duty, marking, restricted merchandise, entry requirements, drawbacks, vessel repairs, or similar matters, but only if the party commencing the civil action demonstrates to the court that he would be irreparably harmed unless given an apportunity to obtain judicial review prior to such importation.
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> * * * * * * *
>
> (i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)–(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—
>
> (1) Revenue from imports or tonnage;
>
> (2) Tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;
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> (3) Embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or
>
> (4) Administration and enforcement with respect to the matters referred to in paragraphs (1)–(3) of this subsection and subsections (a)–(h) of this section.
>
> * * * * * * *

*Jurisdiction Under 28 U.S.C. § 1581(a)*

28 U.S.C. § 1581(a) grants the Court of International Trade exclusive jurisdiction of any civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1515 (Supp. IV 1980). In turn, 19 U.S.C. § 1515 provides for the allowance or denial of protests filed pursuant to section 514 of

the Tariff Act of 1930, as amended, 19 U.S.C. § 1514 (Supp. IV 1980).

This statutory scheme indicates that the court has jurisdiction of this action under 28 U.S.C. § 1581(a) only if the rejection of plaintiff's substitute entry documents was a protestable decision under 19 U.S.C. § 1514. Plaintiff claims that the rejection of its entry documents was protestable under section 1514(a)(4) which allows importers to protest decisions by customs officers as to:

> (4) the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody under any provision of the customs laws, expect a determination appealable under section 1337 of this title;

Plaintiff alleges that its aircraft was excluded from entry by the district director's rejection of the substitute entry documents on May 7, 1981. It asserts that the rejection of the substitute entry documents is an "exclusion of merchandise from entry," within the meaning of 19 U.S.C. § 1514(a)(4). Defendant emphasizes that in this case no merchandise has been excluded since the aircraft has already been released into the commerce of the United States. Plaintiff, however, responds that the statute allows importers to protest exclusions from entry *or* delivery. In plaintiff's view, although the aircraft has not been excluded from delivery, it has nevertheless been excluded from entry.

The authorities which plaintiff submits in support of its interpretation of the statutory provisions do not resolve the question presented. In *Central Commodities Corp.* v. *United States,* 6 Cust. Ct. 452, C.D. 514 (1941), the court took jurisdiction of an action contesting the rejection of an entry because the importer did not tender, in addition to the regular duties, an amount to cover the countervailing duties which Customs claimed were due. In rendering its opinion, however, the court did not indicate whether the imported merchandise had been released from Customs custody prior to the filing of the protest. In *Alberta Gas Chemicals, Inc.* v. *United States,* 84 Cust. Ct. 217, C.R.D. 80–1, 483 F. Supp. 303 (1980), the court took jurisdiction of an action contesting Customs rejection of an entry because the importer refused to file an antidumping bond. In *Alberta Gas,* the court clearly indicated that the imported merchandise had been excluded from both entry *and* delivery. Thus, in neither *Central Commodities* nor *Alberta Gas* was the court called upon to find an exclusion of merchandise based on a distinction between entry and delivery.

In *A. N. Deringer, Inc.* v. *United States,* 37 Cust. Ct. 166, C.D. 1818 (1956), the imported merchandise was released before Customs refused the importer's oral request to enter the goods free of duty under a temporary importation bond. However, the importer did not commence an action in the United States Customs Court until it had filed an entry as directed by the customs officer, the entry was liquidated, and all liquidated duties were paid. In holding that

the action was timely filed, the court uttered the dictum that the importer might have pursued an action based on exclusion but that this possibility would not preclude a cause of action based on the denial of a protest filed after liquidation and the payment of duties. Since the court's jurisdiction over an action based on exclusion was not in issue, the court did not analyze that question, nor did it consider the distinction between entry and delivery upon which plaintiff relies in this case.

At oral argument, plaintiff observed that the term "entry," in customs usage, is a term of art. The customs regulations define entry as "that documentation required * * * to be filed with the appropriate Customs officer to *secure the release* of imported merchandise from Customs custody, or the act of filing that documentation." 19 C.F.R. § 141.0a(a) (1982). (Emphasis added.) Entry occurs when "the appropriate Customs officer *authorizes the release* of the merchandise * * *." 19 C.F.R. § 141.68(a)(1) (1982). (Emphasis added.) These regulations indicate that, contrary to plaintiff's assertion, the term "entry," in customs practice, is very closely bound to the act of releasing merchandise into the commerce of the United States.

While there may be instances when the delivery of merchandise and its entry occur independently, as when the importer enjoys an immediate delivery privilege, entry and delivery did not occur independently in the present case. In this case delivery of the merchandise was permitted only when plaintiff did in fact file an entry, i.e., a vessel repair entry. The vessel repair entry, though based upon an erroneous factual assumption, was not a nullity. It was effective to secure the release of plaintiff's merchandise into the commerce of the United States, and thus resulted in an entry of merchandise, within the meaning of 19 U.S.C. § 1514(a)(4). Without redelivery of the goods, the correction, amendment or substitution of entry documents cannot alter the operative fact that plaintiff's *merchandise* was entered on August 10, 1979 when plaintiff filed a vessel repair entry and bond, and thereby secured the *release* of its aircraft.

In view of the applicable statutory provisions and pertinent regulations, the court holds that the rejection of substitute entry documents, submitted after the merchandise has been released into the commerce of the United States, does not constitute an exclusion of merchandise from entry. Since the rejection of plaintiff's substitute entry documents was not protestable under 19 U.S.C. § 1514(a)(4), the protest filed by plaintiff prior to liquidation was premature and may not serve as a basis for invoking this court's jurisdiction under 28 U.S.C. § 1581(a). *Dart Export Corp.* v. *United States,* 43 CCPA 64, C.A.D. 610 (1956), *cert. denied,* 342 U.S. 824 (1956).

*Jurisdiction Under 28 U.S.C. § 1581(h)*

Plaintiff's contention that the court has jurisdiction of this action pursuant to 28 U.S.C. § 1581(h) is plainly without merit. Section

1581(h) grants the Court of International Trade jurisdiction to review preimportation rulings issued by Customs if the party commencing the action can demonstrate that it would suffer irreparable harm if review were to be denied.

Plaintiff readily acknowledges that this action does not involve a preimportation ruling issued by Customs. Neither has plaintiff attempted to make the necessary showing of irreparable injury or harm to invoke the court's jurisdiction under section 1581(h). Accordingly, the court holds that it does not have jurisdiction of this action under 28 U.S.C. § 1581(h).

*Jurisdiction Under 28 U.S.C. § 1581(i)*

Finally, plaintiff contends that the Court of International Trade has jurisdiction of this action under 28 U.S.C. § 1581(i)(4). That provision, which in broad language grants the court residual jurisdiction of any civil action arising out of the enforcement or administration of the customs laws, has been the subject of considerable judicial scrutiny since its enactment in 1980. With each decision, its features have become more distinct.

Section 1581(i) was enacted to "eliminate the confusion" which formerly existed "as to the demarcation between the jurisdiction of the district courts and the Court of International Trade." The provision was included "to eliminate much of the difficulty experienced by international trade litigants who in the past commenced suits in the district courts only to have those suits dismissed for want of subject matter jurisdiction. The grant of jurisdiction in subsection (i) will ensure that these suits will be heard on their merits." H.R. Rep. No. 96-1235, 96th Cong., 2d Sess. 47, *reprinted in* 1980 U.S. Code Cong. & Ad. News 3729, 3758-3759. Although it was not intended "to create any new causes of action not founded on other provisions of law," it was intended "to confer subject matter jurisdiction upon the court * * *." *Id.* at 3759. *See also Carlingswitch, Inc.* v. *United States,* 5 CIT —, Slip Op. 83-13 (Feb. 15, 1983).

As this court observed in *American Air Parcel Forwarding Co.* v. *United States,* 1 CIT 293, 515 F. Supp. 47 (1981), section 1581(i) was designed to serve as a "broad 'residual grant of jurisdictional authority' " and was apparently drawn from 28 U.S.C. § 1331, the federal question jurisdictional provision with respect to United States district courts. "Section 1581(i) may be said to accomplish, as to the Court of International Trade, the purpose served by § 1331 for the district courts." 1 CIT at 295-296, 515 F. Supp. at 50-51.

This relationship between the scope and dimension of this court's subject matter jurisdiciton under section 1581(i), and the pre-1980 subject matter jurisdiction of United States district courts was perceived and applied in two instructive opinions, *United States* v. *Uniroyal,* 69 CCPA —, 687 F. 2d 467 (1982), and *United States Cane*

*Sugar Refiners' Association* v. *Block,* 69 CCPA —, 683 F. 2d 399 (1982).

In *Uniroyal,* the court, after examining the pertinent legislative history, concluded that: "The jurisdiction of the Court of International Trade under § 1581(i) is expressly 'in addition to the jurisdiction conferred * * * by subsections (a)–(h),' and the legislative history of § 1581 further evidences Congress' intention that subsection (i) not be used *generally* to bypass administrative review by meaningful protest." (Italic added.) 687 F. 2d at 472. As noted in the majority opinion, at footnote 15, this construction of subsection (i) is consistent with pre-1980 precedent from the district courts.

Similarly, Chief Judge Markey, in *United States Cane Sugar Refiners' Association,* referred to the pre-1980 subject matter jurisdiction of the district courts in construing the intended scope of section 1581(i), and held that this court had jurisdiction of the action in that case under section 1581(i):

> * * * Respecting jurisdiction under § 1581(i), we note the provision of injunctive powers to the Court of International Trade in the Customs Courts Act of 1980 and the special circumstances of this case which, absent that provision, would have required Association to present its case to the District Court. We are persuaded that in this case, involving the potential for immediate injury and irreparable harm to an industry and a substantial impact on the national economy, *the delay inherent in proceeding under § 1581(a) makes relief under that provision manifestly inadequate and, accordingly, the court has jurisdiction in this case under § 1581(i).* (Italic added.) 683 F. 2d 399, 402, Note 5.

It is apparent, therefore, that this court has subject matter jurisdiction under section 1581(i) of a cause of action, which otherwise would be within section 1581(a), only when the relief available under section 1581(a) is manifestly inadequate or when necessary, because of special circumstances, to avoid extraordinary and unjustified delays caused by the exhaustion of administrative remedies.

Recognizing the jurisdictional limitations of section 1581(i), plaintiff does not claim that its cause of action arises under that provision. Rather, it asserts that it has been aggrieved by the district director's administration of sections 315 and 505 of the Tariff Act of 1930, as amended, 19 U.S.C. §§ 1315, 1505 (Supp. IV 1980). In pertinent part, section 1315 states that the rate of duty applicable to imported merchandise shall be the rate of duty in effect at the time when the documents comprising the entry, together with the estimated duties, have been deposited with the appropriate customs officer. Articles for which duty may be paid at a time later than the time of making entry are subject to the rate in effect at the time of entry. Section 1505 provides that unless merchandise is entered for warehouse or transportation, or under bond, the importer

must deposit at the time of entry the amount of duties estimated by Customs to be payable on the merchandise.

Plaintiff's substantive claim is that Customs has misapplied these provisions by asking plaintiff to deposit estimated duties calculated in accordance with the rate of duty applicable in 1979 when its plane was released into the commerce of the United States. Plaintiff argues that as a result of a mistake in the original entry filed in 1979 its entry documents were not filed until 1981. Hence, it should enjoy the benefit of the change in the tariff schedules which took effect in 1980. This change eliminated the 5% ad valorem duty which was applicable to imported aircraft during 1979 when plaintiff's aircraft entered the United States.

Plaintiff contends that it has exhausted its administrative remedies by protesting the rejection of the substitute entry documents which it submitted to Customs in 1981. Alternatively, it urges that it is inappropriate to require the exhaustion of administrative remedies in this case "in view of the delays engendered by the unlawful, arbitrary, and capricious actions of the District Director; the financial loss suffered by plaintiff; and the narrow strictly legal question involved."

Defendant, on the other hand, maintains that plaintiff seeks a declaratory judgment designating the classification and rate of duty applicable to imported merchandise. Defendant points out that importers may contest the classification and rate of duty applicable to imported merchandise by a protest filed after liquidation. The defendant emphasizes that the court may take jurisdiction of this kind of an action only when a protest filed after liquidation has been denied and all liquidated duties have been paid.

Notwithstanding the useful and beneficial purposes of section 1581(i), the court has concluded that its invocation in the case at bar would frustrate the orderly administration of the customs laws by permitting plaintiff to circumvent the usual and normal administrative review process. It is both necessary and appropriate that plaintiff be required to pursue the administrative review process prescribed by Congress before seeking relief in this court.

Whether the question to be decided is factual or "strictly legal," the judicial respect due the administrative process requires that the decision should be made in the first instance by the administrative agency to whom Congress has delegated the responsibility of administering the statutory plan. *See* Justice Frankfurter in *FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 141 (1940) ("the due observance by courts of the distribution of authority made by Congress as between its power to regulate commerce and the reviewing power which it has conferred upon the courts under Article III of the Constitution"), and dissent in *CBS* v. *United States*, 316 U.S. 407, 441 (1941) ("due regard for the proper distribution made by Congress of legal authority as between two law-enforcing agencies of government, the administrative and the judicial").

In this action the plaintiff is asking the court to review, prior to liquidation or the payment of estimated duties, a decision by Cus-

toms classifying imported merchandise for the purpose of determining estimated duties. This complaint falls squarely within the class of cases described in 19 U.S.C. § 1514, which provides that decisions involving the "classification and rate and amount of duties chargeable" are subject to administrative review by way of protest filed within ninety days after, but not before, notice of liquidation. Customs decisions as to the classification and rate of duty on imported merchandise are clearly subject to judicial review under 28 U.S.C. § 1581(a). A civil action contesting those decisions, however, may be commenced only after an administrative protest has been denied and all liquidated duties have been paid. 28 U.S.C. § 2637.

The existence of a specific statutory scheme, which provides for administrative and judicial review of determinations of classification and rate of duty, precludes the court from assuming jurisdiction of this action under any other provision, including section 1581(i).

It must be noted that this case does not involve an extraordinary hardship or unusual injury which would render the exhaustion of administrative remedies lacking in due process or otherwise inappropriate. Plaintiff has not demonstrated that the review procedure established by Congress to contest the classification and rate of duty of imported merchandise is manifestly inadequate or will cause irreparable injury. See concurring opinion in *United States* v. *Uniroyal, Inc., supra,* 687 F. 2d at 475. Moreover, since plaintiff did not provide Customs with accurate information when the aircraft arrived in Honolulu in 1979 and the vessel repair entry was filed, it is not without blame for the delays caused by the mistake as to the plane's registry.

Finally, it is appropriate to conclude by recalling the "long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." *Meyers* v. *Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50–51 (1938). In this case, plaintiff has shown no statutory or judicial authority, extraordinary hardship, or irreparable injury which would justify a departure from this long settled rule of judicial administration.

Since plaintiff has neither pursued nor exhausted its administrative remedies in the manner prescribed by Congress, the court lacks jurisdiction, and this action is dismissed.

It is so ordered.

Dated: March 16, 1983, New York, NY..

EDWARD D. RE,
*Chief Judge.*

Ordered, adjudged, and decreed, that this action be and hereby is dismissed.

Dated: March 16, 1983, New York, NY.

EDWARD D. RE,
*Chief Judge.*

# Judgment of U.S. Court of International Trade in Appealed Cases

## Petitions for Writs of Certiorari Filed With Supreme Court

February 16, 1983

APPEAL NO. 82-16—INTERNATIONAL FASHIONS, A CORP. *v.* TREASURER OF THE UNITED STATES, ET AL.—TRADING WITH THE ENEMY ACT CLAIMS IN CONSEQUENCE OF P.P. 4074, SO-CALLED 1971 SURCHARGE ACTION.—Appeal from Slip Op. 81-122, filed on February 25, 1982, affirmed December 13, 1982, Supreme Court No. 82-1403, October Term, 1982. Petition filed by appellant.

APPEAL NO. 82-17—ALCAN SALES, DIV. OF ALCAN ALUMINUM CORP. *v.* UNITED STATES.—TRADING WITH THE ENEMY ACT CLAIMS IN CONSEQUENCE OF P.P. 4074, SO-CALLED 1971 SURCHARGE ACTION.—Appeal from Slip Op. 81-121, filed February 25, 1982, affirmed December 13, 1982, Supreme Court No. 82-1384, October Term, 1982. Petition filed by appellant.

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## Petition for Rehearing Before the United States Court of Appeals for the Federal Circuit

APPEAL NO. 82-29—BAR ZEL EXPEDITERS, INC., A/C BEN CLEMENTS & SONS, INC. *v.* UNITED STATES—FASTENING DEVICES.—Appeal from Slip Op. 82-25 filed on June 11, 1982—Affirmed February 4, 1983. Petition for rehearing filed February 25, 1983, denied March 8, 1983.

# Decisions of the United States Court of International Trade

## *Abstracts*

## *Abstracted Protest Decisions*

DEPARTMENT OF THE TREASURY, *March 17, 1983.*

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the Customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to Customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,
*Commissioner of Customs.*

| DECISION NUMBER | JUDGE & DATE OF DECISION | PLAINTIFF | COURT NO. | ASSESSED | HELD | BASIS | PORT OF ENTRY AND MERCHANDISE |
|---|---|---|---|---|---|---|---|
| | | | | Item No. and Rate | Item No. and Rate | | |
| P83/75 | Ford, J. March 10, 1983 | Act Young Imports, Inc. | 82-4-00495 | Item 389.62 15%+25¢ per lb. | Item 706.24 20% | J. E. Mamiye & Sons v. U.S. (C.D. 4878), aff'd 11/19/81 | New York Tote bags |
| P83/76 | Boe, J. March 10, 1983 | APF Electronics Inc. | 81-12-01735 | Items 720.02, 720.14, etc. Various rates | Item 676.20 4.8% or 4.7% | Texas Instruments, Inc. v. U.S., Slip Op. 81-31 (CIT 4/17/81), aff'd 3/25/82 | Los Angeles Solid state timing devices; entirety with article in which incorporated |
| P83/77 | Boe, J. March 10, 1983 | Colonial Printing Ink Co. | 78-10-01729 | Item 406.70 20% | Item 474.26 2% | Agreed statement of facts | New York Ink |
| P83/78 | Boe, J. March 10, 1983 | Colonial Printing Ink Co. | 78-10-01873 | Item 406.70 20% | Item 474.26 2% | Agreed statement of facts | New York Ink |
| P83/79 | Boe, J. March 10, 1983 | Colonial Printing Ink Co. | 79-1-00166 | Item 406.50 20% | Item 474.26 2% | Agreed statement of facts | New York Ink |
| P83/80 | Boe, J. March 10, 1983 | Colonial Printing Ink Co. | 82-1-00123 | Item 406.70 20% | Item 474.26 2% | Agreed statement of facts | New York Ink |
| P83/81 | Maletz, S.J. March 10, 1983 | International Seaway Trading Corp. | 73-4-00894, etc. | Item 700.60 20% | Item 700.70 15%, 13%, 12%, 10%, 9% or 7.5% | International Seaway Trading Corp. v. U.S. (C.D. 4773) | New York Footwear |

| DECISION NUMBER | JUDGE & DATE OF DECISION | PLAINTIFF | COURT NO. | ASSESSED | HELD | BASIS | PORT OF ENTRY AND MERCHANDISE |
|---|---|---|---|---|---|---|---|
| | | | | Item No. and Rate | Item No. and Rate | | |
| P83/82 | Boe, J. March 14, 1983 | Dove International Corp. | 80-1-00014 | Under item 807.00 at rate of duty applicable to items 380.00, 380.06, 382.00, 382.06 with allowance given to cost or value of some of the fabric components the product of the U.S.; no allowance made for fabric components, the product of U.S., subjected to buttonhole and/or pocket slit operations during assembly of imported garments | Components subjected to buttonhole and/or pocket slit operations during assembly process are properly classifiable under item 807.00 and entitled to duty allowance | U.S. v. Mast Industries, No. 81-18 (CCPA 12/30/81) | Miami<br>American goods returned; garments consisting in part of fabric components of U.S. origin subjected to buttonhole and/or pocket slit operations during foreign assembly of imported garments |

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| P83/83 | Boe, J. March 14, 1983 | J.C. Penney Purchasing Corporation | 80-6-00884 | Merchandise separately classified as watch or clock movements and assessed with duty at various rates under items 720.02, 720.16 and 720.18 | Item 678.50 5% (merchandise marked "SFA") Item 684.30 4% (merchandise marked "SFB" and "NB") Item 685.20 5% (merchandise marked "NC") Item 685.40 5.5% (merchandise marked "SFD") | Texas Instruments, Inc. v. U.S., Slip Op. 81-31 (CIT 4/17/81), aff'd 3/25/82 | San Francisco; Norfolk Solid state timing devices; entirety with article in which incorporated |
| P83/84 | Boe, J. March 14, 1983 | J.C. Penney Purchasing Corporation | 80-10-01788 | Merchandise separately classified as watch or clock movements and assessed with duty at various rates under items 720.02, 720.16 and 720.18 | Item 678.50 5% or 4.8% (merchandise marked "SFA") Item 684.25 4% (merchandise marked "SFB" and "NB") Item 684.30 4% (merchandise marked "SFC") Item 685.40 5.5% or 5.3% (merchandise marked "SFD" and "ND") | Texas Instruments, Inc. v. U.S., Slip Op. 81-31 (CIT 4/17/81), aff'd 3/25/82 | San Francisco; Norfolk Solid state timing devices; entirety with article in which incorporated |

| DECISION NUMBER | JUDGE & DATE OF DECISION | PLAINTIFF | COURT NO. | ASSESSED | HELD | BASIS | PORT OF ENTRY AND MERCHANDISE |
|---|---|---|---|---|---|---|---|
| | | | | Item No. and Rate | Item No. and Rate | | |
| P83/85 | Boe, J. March 14, 1983 | J.C. Penney Purchasing Corporation | 82-4-00585 | Merchandise separately classified as watch or clock movements and assessed with duty under item 720.18 at 95¢ each + 13.6% | Item 685.40 5.1% (merchandise marked "A" and "B") | Texas Instruments, Inc. v. U.S., Slip Op. 81-31 (CIT 4/17/81), aff'd 3/25/82 | San Francisco; Norfolk<br>Solid state timing devices; entirety with article in which incorporated |
| P83/86 | Boe, J. March 14, 1983 | North American Foreign Trading Corp. | 81-2-00139 | LCD clocks classified under item 715.15 with duty assessed on the "movements" under item 716.15, 716.18 or 720.02 at 75¢ each, 67¢ each, 37¢ each or 36¢ each, and with duty on the cases under item 720.34 at 13.5% or 12.7% (merchandise marked "A"); "clock" portion of merchandise described as clock calculators classified under item 715.15 with duty on the "movements" under item 720.02 (rate of duty not stated) (merchandise marked "B") | Item 688.36 5.5% or 5.3% (merchandise marked "A")<br>Item 676.20 4.8% (merchandise marked "B") | Agreed statement of facts | New York<br>LCD clocks (merchandise marked "A"); "clock" portion of clock calculators—entirely with calculators (merchandise marked "B") |

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| P83/87 | Boe, J.<br>March 14, 1983 | Sanyo Electric, Inc. | 80-12-00185, etc. | Merchandise separately classified as watch or clock movements and assessed with duty at various rates under items 715.49, 716.12, 720.14, 720.16, 720.18, etc. | Item 678.50<br>5%, 4.8%, 4.7% or 4.5% (merchandise marked "A")<br>Item 684.25<br>4% (merchandise marked "B")<br>Item 685.24<br>10.4%, 9.9%, 9.3% or 8.8% (merchandise marked "C")<br>Item 685.40<br>5.5%, 5.3% or 4.9% (merchandise marked "D")<br>Item 685.50<br>7.5%, 6.9% or 6.5% (merchandise marked "E")<br>Item 688.40 or 688.45<br>5.5%, 5.3%, 5.1% or 4.9% (merchandise marked "F")<br>Item 685.90<br>8.1% (merchandise marked "G") | Texas Instruments, Inc. v. U.S., Slip Op. 81-31 (CIT 4/17/81), aff'd 3/25/82 | Los Angeles<br>Solid state timing devices; entirety with article in which incorporated |

| DECISION NUMBER | JUDGE & DATE OF DECISION | PLAINTIFF | COURT NO. | ASSESSED | HELD | BASIS | PORT OF ENTRY AND MERCHANDISE |
|---|---|---|---|---|---|---|---|
| | | | | Item No. and Rate | Item No. and Rate | | |
| P83/88 | Boe, J. March 14, 1983 | Sanyo Electric, Inc. | 81-8-01077, etc. | Merchandise separately classified as watch or clock movements and assessed with duty at various rates under items 715.49, 716.12, 720.14, 720.16, 720.18, etc. | Item 676.20 5%, 4.8%, 4.7% or 4.5% (merchandise marked "A") Item 678.50 5%, 4.8%, 4.7% or 4.5% (merchandise marked "B") Item 684.25 4% (merchandise marked "C") Item 685.24 10.4%, 9.9%, 9.3% or 8.8% (merchandise marked "D") Item 685.50 7.5%, 6.9% or 6.5% (merchandise marked "E") | Texas Instruments, Inc. v. U.S., Slip Op. 81-31 (CIT 4/17/81), aff'd 3/25/82 | New York Solid state timing devices; entirety with article in which incorporated |
| P83/89 | Ford, J. March 15, 1983 | Astra Trading Corp. et al. | 80-3-00571, etc. | Item 389.62 15% + 25¢ per lb. | Item 706.24 20% | J.E. Mamiye & Sons v. U.S. (C.D. 4878, aff'd 11/19/81) | New York Tote bags, traveling bags, etc. |
| P83/90 | Ford, J. March 15, 1983 | Berkshire Handkerchief Co., Inc., et al. | 80-11-00019, etc. | Item 389.62 15% + 25¢ per lb. | Item 706.24 20% | J.E. Mamiye & Sons v. U.S. (C.D. 4878, aff'd 11/19/81) | New York Ladies tote bags, etc. |
| P83/91 | Boe, J. March 15, 1983 | Bradley Time Div., Elgin National Watch Corp. | 80-8-01248 | Item 720.18 $1.125 each + 16% (clock portion) | Item A544.51 Free of duty pursuant to GSP (all merchandise) | Texas Instruments, Inc. v. U.S., Slip Op. 81-31 (CIT 4/17/81), aff'd 3/25/82 | New York Electronic mirror-clock; products of beneficiary developing country |

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| P83/92 | Boe, J. March 15, 1983 | Bradley Time Div., Elgin National Watch Corp. | 81-5-00482, etc. | Items 715.33, 716.10, 716.12, 716.14, 716.18, 716.28, etc. Various rates (as "watch or clock movements") Item 720.24 or 720.28 Various rates (as "watch cases") | Item 688.36 5.5%, 5.3%, 5.1% or 4.8% (all merchandise) | Texas Instruments, Inc. v. U.S., Slip Op. 81-31 (CIT 4/17/81), aff'd 3/25/82 | New York Solid state electronic watch modules, solid state electronic watches, and other solid state electronic timing devices |
| P83/93 | Boe, J. March 15, 1983 | J.C. Penney Purchasing Corporation | 82-1-00068 | Merchanise separately classified as watch or clock movements and assessed with duty at various rates under items 720.02 and 720.18 | Item 678.50 5% (merchandise marked "A") Item 685.40 5.1% (merchandise marked "B") | Texas Instruments, Inc. v. U.S., Slip Op. 81-31 (CIT 4/17/81), aff'd 3/25/82 | San Francisco; Norfolk Solid state timing devices; entirety with article in which incorporated |
| P83/94 | Boe, J. March 15, 1983 | Meyers Mfg. Co. Inc. et al. | 81-10-01356, etc. | Item 355.82 15% + 12.5¢ per lb. Item 359.20 6.5% | Item 771.43 6% | U.S. v. Elbe Products Corp. (C.A.D. 1267) | New York Synthetic leather |
| P83/95 | Boe, J. March 15, 1983 | North American Foreign Trading Corp. | 80-7-01067 | Item 716.14 75¢ each | Item 688.36 5.5% | U.S. v. Texas Instruments, Inc., No. 81-23 (CCPA 3/25/82) | New York LCD watch modules |

| DECISION NUMBER | JUDGE & DATE OF DECISION | PLAINTIFF | COURT NO. | ASSESSED | HELD | BASIS | PORT OF ENTRY AND MERCHANDISE |
|---|---|---|---|---|---|---|---|
| | | | | Item No. and Rate | Item No. and Rate | | |
| P83/96 | Boe, J. March 15, 1983 | North American Foreign Trading Corp. | 80-10-01748 | LCD watches classified under item 715.05 with duty assessed on the "movements" under item 716.15 at 75¢ each, and with duty on the cases under item 720.34 at 13.5% | Item 688.36 5.5% | U.S. v. Texas Instruments, Inc. No. 81-23 (CCPA 3/25/82) | New York LCD watches |

# Decisions of the United States Court of International Trade

## *Abstracts*

## *Abstracted Reappraisement Decisions*

| DECISION NUMBER | JUDGE & DATE OF DECISION | PLAINTIFF | COURT NO. | BASIS OF VALUATION | HELD VALUE | BASIS | PORT OF ENTRY AND MERCHANDISE |
|---|---|---|---|---|---|---|---|
| R83/289 | Re, C.J. March 10, 1983 | Adorence Co., Inc. | 74-4-01053, etc. | Export value | Appraised values shown on entry papers less additions included to reflect currency revaluation | C.B.S. Imports Corp. v. U.S. (C.D. 4739) | New York Not stated |
| R83/290 | Re, C.J. March 10, 1983 | Harry J. Rashti & Co. Inc. | 77-3-00489 | Export value | Appraised values shown on entry papers less additions included to reflect currency revaluation | C.B.S. Imports Corp. v. U.S. (C.D. 4739) | New York Wearing apparel, etc. |

| DECISION NUMBER | JUDGE & DATE OF DECISION | PLAINTIFF | COURT NO. | BASIS OF VALUATION | HELD VALUE | BASIS | PORT OF ENTRY AND MERCHANDISE |
|---|---|---|---|---|---|---|---|
| R83/291 | Re, C.J. March 10, 1983 | Zayre Corporation | 73-12-03408 | Export value | Appraised values, less amounts for currency fluctuation | C.B.S. Imports Corp. v. U.S. (C.D. 4739) | Boston<br>Not stated |
| R83/292 | Boe, J. March 10, 1983 | Dana Perfumes Corporation et al. | R68/11482, etc. | Cost of prooduction | Amounts for material, labor, fabrication costs and general expenses incurred for export to U.S. as included in invoice prices, plus profit percentage of 54.84%, plus export packing | Agreed statement of facts | New York<br>Canoe Cologne, Uncartoned Canoe Cologne, Pullman Cologne |
| R83/293 | Boe, J. March 10, 1983 | Y. Nishida | 79-10-01499 | United States value | Calculated by the formulae set forth in Customs Service Ruling CIE 30/81 of 7/20/81 | Agreed statement of facts | New York<br>Polyester knit fabrics |
| R83/294 | Boe, J. March 10, 1983 | Perkin Elmer Corporation | 78-12-02266 | Export value | Invoice unit prices, net packed; said prices represent exporter's list prices less 35% discount | Agreed statement of facts | New York<br>Electrical instruments and accessories |
| R83/295 | Watson, J. March 11, 1983 | A & A Trading Corp. | R58/17583, etc. | Export value | F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values | Agreed statement of facts | New York<br>Prism binoculars |

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| R83/296 | Watson, J. March 11, 1983 | Mitsubishi International Corp. | R58/13281, etc. | Export value | Appraised unit values less 7.5% thereof, net packed | Agreed statement of facts | New York<br>Cotton gingham, etc. |
| R83/297 | Watson, J. March 11, 1983 | Proper Mfg., Co., Inc., et al. | R65/14278, etc. | Export value | F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values | Agreed statement of facts | New York<br>Thermometers |
| R83/298 | Boe, J. March 11, 1983 | Dana Perfumes Corp. et al. | R70/3872, etc. | Cost of production (item Nos. 8225, 8226, 8228, 8229, 8264 on invoices)<br>Constructed value (item Nos. 8702, 8714, U8711 on invoices) | Amounts for material, labor, fabrication costs and general expenses incurred for export to U.S. as included in invoice prices, plus profit percentage of 71.35%, plus export packing (item Nos. 8225, etc.)<br>Amounts for material and labor costs incurred for export to U.S. as included in invoice prices, plus usual general expenses and profit percentage of 56.37%, plus export packing | Agreed statement of facts | New York<br>Canoe Cologne, Canoe After Shave, etc. |

| DECISION NUMBER | JUDGE & DATE OF DECISION | PLAINTIFF | COURT NO. | BASIS OF VALUATION | HELD VALUE | BASIS | PORT OF ENTRY AND MERCHANDISE |
|---|---|---|---|---|---|---|---|
| R83/299 | Boe. J. March 14, 1983 | American Honda Motor Co., Inc. | 80-2-00357 | Cost of production (merchandise listed on schedules A and B attached to decision and judgment) | As set forth in "Claimed Unit Values" column in schedule A Correct cost of production converted to U.S. dollars is set forth in "Claimed Cost of Production in U.S. Dollars" column in schedule B | Agreed statement of facts | New York Motor vehicles listed on schedules A and B |
| R83/300 | Boe, J. March 14, 1983 | Baird Chemical Industries, Inc. | R62/8014, etc. | United States value | Dutiable values per pound are the appropriate values specified on schedule attached to decision and judgment in column designated "Dutiable Value" | Agreed statement of facts | Baltimore Thiourea |
| R83/301 | Boe, J. March 14, 1983 | Carson M. Simon & Co. | R65/21250 | United States value | Dutiable values per pound are the appropriate values specified on schedule attached to decision and judgment in column designated "Dutiable Value" | Agreed statement of facts | Philadelphia Thiourea |

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| R83/302 | Boe, J. March 14, 1983 | F.B. Vandegrift & Co. Inc. | R65/20580, etc. | United States value | Dutiable values per pound are the appropriate values specified on schedule attached to decision and judgment in column designated "Dutiable Value" | Agreed statement of facts | Philadelphia Thiourea |
| R83/303 | Boe, J. March 14, 1983 | R.J. Saunders & Co., Inc. | R59/12803, etc. | United States value | Dutiable values per pound are the appropriate values specified on schedule attached to decision and judgment in column designated "Dutiable Value" | Agreed statement of facts | New York Thiourea |
| R83/304 | Boe, J. March 14, 1983 | Samuel Shapiro & Co., Inc. | R62/8016, etc. | United States value | Dutiable values per pound are the appropriate values specified on schedule attached to decision and judgment in column designated "Dutiable Value" | Agreed statement of facts | Baltimore Thiourea |

| DECISION NUMBER | JUDGE & DATE OF DECISION | PLAINTIFF | COURT NO. | BASIS OF VALUATION | HELD VALUE | BASIS | PORT OF ENTRY AND MERCHANDISE |
|---|---|---|---|---|---|---|---|
| R83/305 | Re, C.J. March 15, 1983 | Allied Stores Int'l. Inc. | 79-2-00281 | Export value | Appraised values shown on entry papers less additions included to reflect currency revaluation | C.B.S. Imports Corp. v. U.S. (C.D. 4739) | New York Not stated |
| R83/306 | Re, C.J. March 15, 1983 | Lenco Photo Products, Inc. | 78-2-00270 | Export value | Appraised values shown on entry papers less additions included to reflect currency revaluation | C.B.S. Imports Corp. v. U.S. (C.D. 4739) | Chicago Not stated |
| R83/307 | Re, C.J. March 15, 1983 | Marubeni America Corp. | 75-2-00465 | Export value | Unit values found by appraising customs official, less ocean freight and marine insurance, and without additions for currency fluctuation | C.B.S. Imports Corp. v. U.S. (C.D. 4739) | Chicago Graphite electrodes |
| R83/308 | Re, C.J. March 15, 1983 | Marubeni America Corp. | 75-4-00827, etc. | Export value | Unit values found by appraising customs official, less ocean freight and marine insurance, and without additions for currency fluctuation | C.B.S. Imports Corp. v. U.S. (C.D. 4739) | New York Not stated |

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| R83/309 | Re, C.J. March 15, 1983 | Marubeni Iida (America) Inc. | 75–10–02747, etc. | Export value | Unit values found by appraising customs official, less ocean freight and marine insurance, and without additions for currency fluctuation | C.B.S. Imports Corp. v. U.S. (C.D. 4739) | New York<br>Not stated |
| R83/310 | Watson, J. March 15, 1983 | Kanematsu Gosho Inc. | R60/1784, etc. | Export value | F.o.b. unit prices plus 20% of difference between f.o.b. unit prices and appraised values | Agreed statement of facts | New York<br>Transistor radios and any accessories and parts; entireties |
| R83/311 | Watson, J. March 15, 1983 | Kanematsu N.Y. Inc. | R62/7528 | Export value | Appraised unit values less 7.5% thereof, net packed | Agreed statement of facts | New York<br>Transistor radios and any accessories and parts; entireties |
| R83/312 | Boe, J. March 15, 1983 | E.S. Originals, Inc. | 81–8–01078 | Export value | Invoiced f.o.b. Hong Kong prices specified, per pair | Agreed statement of facts | Los Angeles<br>Ladies and misses styles footwear manufactured in the People's Republic of China |
| R83/313 | Boe, J. March 15, 1983 | Frank P. Dow Co., Inc. of L.A. | R61/11808, etc. | United States value | Dutiable values per pound are appropriate values specified on schedule attached to decision and judgment in column designated "Dutiable Value" | Agreed statement of facts | Los Angeles<br>Thiourea |

# International Trade Commission Notices

*Investigations by the U.S. International Trade Commission*

DEPARTMENT OF THE TREASURY, *March 23, 1983.*

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

WILLIAM VON RAAB,
*Commissioner of Customs.*

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In the Matter of
CERTAIN CT SCANNER AND GAMMA CAMERA MEDICAL DIAGNOSTIC IMAGING APPARATUS } Investigation No. 337-TA-123

*Commission Hearing on the Presiding Officer's Recommendation and on Remedy, the Public Interest, and Bonding, and the Schedule for Filing Written Submissions*

AGENCY: U.S. International Trade Commission.

ACTION: The scheduling of a public hearing and written submissions in investigation No. 337-TA-123, Certain CT Scanner and Gamma Camera Medical Diagnostic Imaging Apparatus.

Notice is hereby given that the presiding officer in this investigation has issued a recommended determination that there is no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the unauthorized importation into the United States and in the sale of the CT scanner and gamma camera imaging apparatus that are the subject of the investigation. The presiding officer's recommendation and the record upon which it is based have been certified to the Commission for review and a Commission determination. Interested persons may obtain copies of the nonconfidential version of the presiding officer's recommendation (as well as any other public documents on the record of the investigation) by contacting the Office of the Secretary, Docket Section, U.S. Interna-

tional Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202–523–0176.

COMMISSION HEARING: The Commission will hold a public hearing on April 22, 1983, in the Commission's Hearing Room, 701 E Street NW., Washington, D.C. 20436, beginning at 10:00 a.m. The hearing will be divided into two parts. First, the Commission will hear oral arguments on the presiding officer's recommended determination that there is no violation of section 337 of the Tariff Act of 1930 in this case. Second, the Commission will hear presentations concerning the appropriate remedy, the effect that such remedy would have upon the public interest, and the proper amount of the bond during the Presidential review period, in the event that the Commission determines that there is a violation of section 337 and that relief should be granted. These matters will be heard on the same day in order to facilitate the completion of this investigation within time limits established by law and to minimize the burden upon the parties.

ORAL ARGUMENTS: Parties to the investigation and interested Government agencies may present oral arguments concerning the presiding officer's recommended determination. That portion of the total time allocated to each party or agency for oral argument may be used in any way the party or agency presenting arguments sees fit, i.e., a portion of the time may be reserved for rebuttal or devoted to summation. The oral arguments will be held in the following order: complainant, respondents, Government agencies, and the Commission investigative attorney. Any rebuttals will be held in this order: respondents, complainant, Government agencies, and the Commission investigative attorney. Persons making oral arguments are reminded that such arguments must be based upon the evidentiary record certified to the Commission by the presiding officer.

ORAL PRESENTATIONS ON REMEDY, THE PUBLIC INTEREST, AND BONDING: Following the oral arguments on the presiding officer's recommendation, parties to the investigation, Government agencies, public-interest groups, and interested members of the public may make oral presentations on the issues of remedy, the public interest, and bonding. This portion of the hearing is quasilegislative in nature; presentations need not be confined to the evidentiary record certified to the Commission by the presiding officer and may include the testimony of witnesses. Oral presentations on remedy, the public interest, and bonding will be heard in this order: complainant, respondents, Government agencies, the Commission investigative attorney, public-interest groups, and interested members of the public.

If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2)

an order which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in hearing presentations which address the form of relief, if any, which should be ordered.

If the Commission concludes that a violation of section 337 has occurred and contemplates a remedy, it must consider the effect of that remedy upon the public interest. The factors which the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers.

If the Commission finds that a violation of section 337 has occurred and orders a remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission therefore is interested in hearing presentations concerning the amount of the bond, if any, which should be imposed.

TIME LIMIT FOR ORAL ARGUMENT AND ORAL PRESENTATION: Complainant, respondents (collectively), the Commission investigative attorney, and Government agencies will be limited to a total of 30 minutes (exclusive of the time consumed by questions from the Commission or its advisory staff) for presenting both oral arguments on violation and oral presentations on remedy, the public interest, and bonding. Persons making only oral presentations on remedy, the public interest, and bonding will be limited to 10 minutes (exclusive of time consumed by questions from the Commission and its advisory staff). The Commission may in its discretion expand the aforementioned time limits upon receipt of a timely request to do so.

WRITTEN SUBMISSIONS: In order to give greater focus to the hearing, the parties to the investigation and interested Government agencies are encouraged to file briefs on the issues of violation (to the extent they have not already briefed that issue in their written exceptions to the presiding officer's recommended determination), remedy, the public interest, and bonding. The complainant and the Commission investigative attorney also are requested to submit a proposed exclusion order and/or proposed cease and desist orders for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Written submissions on the question of violation must be filed not later than the close of buisness on April 4, 1983; written submissions on the questions of relief, the public interest, and bonding

must be filed not later than the close of business on April 8, 1983. During the course of the hearing, the parties may be asked to file posthearing briefs.

NOTICE OF APPEARANCE: Written requests to appear at the Commission hearing must be filed with the Office of the Secretary by April 15, 1983.

ADDITIONAL INFORMATION: Persons submitting briefs and/or written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to discuss confidential information or to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the presiding officer. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Secretary's Office.

Notice of this investigation was published in the Federal Register of June 3, 1982, 47 F.R. 24232.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350.

By order of the Commission.

Issued: March 15, 1983.

KENNETH R. MASON,
*Secretary.*

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In the Matter of
CERTAIN COPPER-CLAD STAINLESS STEEL COOKWARE } Investigation No. 337-TA-141

*Order*

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: March 14, 1983.

DONALD K. DUVALL,
*Chief Administrative Law Judge.*

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| In the Matter of CERTAIN COPPER-CLAD STAINLESS STEEL COOKWARE | Investigation No. 337-TA-141 |

*Notice of Investigation*

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 4, 1983, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), on behalf of Revere Copper and Brass Inc., 605 Third Avenue, New York, New York 10158. The complaint alleges unfair methods of competition and unfair acts in the importation into the United States of certain copper-clad stainless steel cookware, or in its sale, by reason of alleged (1) false representation of product; (2) false and deceptive advertising; (3) common law trademark infringement; (4) false designation of manufacturer and/or false designation of geographic origin; and (5) passing off. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation and, after a full investigation, to issue both a permanent exclusion order and a permanent cease and desist order.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in section 210.12 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.12).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on March 3, 1983, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unauthorized importation into the United States of certain copper-clad stainless steel cookware, or in its sale, by reason of alleged (1) false representation of product; (2) false and deceptive advertising; (3) common law trademark infringement; (4) false designation of manufacturer and/or false designation of geographic origin; and (5) passing off, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Revere Copper and Brass Inc., 605 Third Avenue, New York, New York 10158

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Hai Dong Stainless Ind. Co., P.O. Box 584, Pusan, Korea
Ilshin Stainless Co., Ltd., 393 Samlag-Dong, Buk-ku, Pusan, Korea
Dae Sung Industrial Co., Ltd., #370-32 Sinpyung-Ding, Seo-Gu, Pusan, Korea
Baek Yang Stainless Steel Ind. Co., Ltd., B-531, Dong Dai Mun Chain Store Bldg., 89-3 Chungno-Ku, Chungho-Ku, Seoul, Korea
Bum Koo Industrial Co., Ltd., 660-19, Majoun-ri, Kumdan-myun, Kimpo-kun, Kyungki-do, C.P.O. Box 9392, Seoul, Korea
Gum Jong Stainless Steel Company, 370-57, Shin Peong-dong Seo-Ku, Pusan, Korea
Jeil Stainless Steel Ind. Co., 772-1, Kamcheon-dong, Seo-ku, Pusan, Korea
Jun Han Ind. Co., Ltd., 3-7, 1-ka, Pildong, Chung-ku, Seoul, C.P.O. Box 2305, Seoul, Korea
Kana Molson Co., Ltd., Koryo Bldg., Room 312, 24, 1-ka, Shinmoon-ro, Jongro-ku, C.P.O. Box 5622, Seoul, Korea
Shin Woo Stainless Steel Ind. Co., 371-6, Dukpo-dong, Buk-ku, Pusan, Korea
Sue Jin Metal Ind. Co., Ltd., 162, Incheon Jackjun-dong, Buk-ku, C.P.O. Box 1989, Seoul, Korea
Tae Chang Ind. Co., Ltd., 288-2, Misanri, Siheng-kun, Kyungki-do, C.P.O. Box 2739, Seoul, Korea
Woo Sung Co., Ltd., Room 302, Young han Bldg., 59-23, 3-ka, Chung mu-ro, Chung-ku, C.P.O. Box 8181, Seoul, Korea
Kyung-dong Ind. Co., Ltd., 77-2, 3-ka Munrae-dong, Yeongdeung Po-ku, Seoul, Korea
Daelim Trading Co., Ltd., 146-12 Soosung-dong, Chongro-ku, C.P.O. Box 2813, Seoul, Korea
Daewoo Industrial Co., Ltd., 286 Yong-Dong, Jung-Gu, C.P.O. Box 2810, Seoul, Korea
NAMIL Metal Co., Ltd., 1101 Chun Soo Bldg., 47-6, Supyo-dong, Chung-ku, Seoul, Korea
Hosung Trading Co., Ltd., G.P.O. Box 8002, Seoul, Korea
Sae Bang Trading Co. Ltd., 199 Wonnam-Dong, Jongro-Ku, K.P.O. Box 832, Seoul, Korea
Sang Jin Metal Ind. Co., C.P.O. Box 2218, Seoul, Korea
Sam Sung Co., Ltd., C.P.O. Box 1144, Seoul, Korea
Daewoo International America Corp., 100 Daewoo Place, Carlstadt, New Jersey 07072
Davidcraft Corp., 6208 North Broadway, Chicago, Illinois 60660
Ken Carter Industries, Inc., 1220 Broadway, Suite 408, New York, New York 10001

Progressive International Corp., 413 Fairview Avenue, North Seattle, Washington 98109
Trend Products Company, 5301 Laurel Canyon Boulevard, North Hollywood, California 91607
G&S Metal Products Company, Inc., 3330 East 79th Street, Cleveland, Ohio 44127
Venture Stores, 615 Northwest Plaza, St. Ann, Missouri 63074
Horn and Hardart Company, Inc., Hanover House Industries, Inc., 1163 Avenue of the Americas, New York, New York 10036
K-Mart Corp., 3100 W. Big Beaver Road, Troy, Michigan 48084
Montgomery Ward & Co., Montgomery Ward Plaza, Chicago, Illinois 60671
Sears Roebuck & Co., Sears Tower, Chicago, Illinois 60684
Roses Stores, Inc., Drawer 947, Henderson, North Carolina 27536
Aldens, Inc., 5000 W. Roosevelt Road, Chicago, Illinois 60607
Fingerhut Corp., P.O. Box 1279, Minneapolis, Minnesota 55440
Wal-Mart Stores, Inc., 702 S.W. 8th Street, Box 116, Bentonville, Arizona 72712
Bradlees, Division of Stop & Shop, Inc., One Bradlee Circle, Box 100, Braintree, Massachusetts 02184
Gamble-Skogmo, Inc., 5100 Gamble Drive, Highways 12 and 100, Box 458, St. Louis Park, Minnesota 55440
Ann & Hope, Inc., Mill Street, Cumberland, Rhode Island 02864
Alexanders Department Stores, Inc., 500 Seventh Avenue, New York, New York 10022
Riviera, GRF, Inc., Albany, New York 12205
Carol Wright Gifts, Department F528, 809 P Street, P.O. Box 8514, Lincoln, Nebraska 68544
Celadon Copper Bottom Cookware, Celadon Trading Corp., 440 Park Avenue South, New York, New York 10016
Zayre Corp., 770 Cochituate Road, Framingham, Massachusetts 01701
National Brand Distributors Corporation, Dajere Inc., New York, New York 10001
Target Stores, Inc., 777 Nicollet Mall, Minneapolis, Minnesota 55402
Coast to Coast Stores, P. O. Box 80, Minneapolis, Minnesota 55440
Ben Franklin, Division of Household Merchandising, Inc., 1700 South Wolf Road, Des Plaines, Illinois 60018
TG&Y Stores Company, 3815 North Sante Fe, Box 25967, Oklahoma City, Oklahoma 73125
Western Auto Supply Co., 2107 Grand Avenue, Kansas City, Missouri 64108
L.S. Ayres & Co., 1 West Washington Street, Indianapolis, Indiana 46204
New Process Co., 220 Hickory Street, Warren, Pennsylvania 16366
Charter Catalogs, Inc., 3186 Marjan Drive, Atlanta, Georgia 30340

Merchandisers' Association, Inc., 4544 West 103rd Street, Oak Lawn, Illinois 60453

Mutual Merchandising Cooperative, Inc., 200 Madison Avenue, New York, New York 10016

Consumers Distributing Ltd., USA, 205 Campus Plaza, Edison, New Jersery 07728

(c) Juan S. Cockburn, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 128, Washington, D.C. 20436, shall be the Commission investigation attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.21). Pursuant to sections 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, Phone: 202-523-0471.

FOR FURTHER INFORMATION CONTACT: Juan S. Cockburn, Esq., Unfair Import Investigations Division, Room 128, U.S. International Trade Commission, telephone 202-523-1272.

By order of the Commission.

Issued: March 10, 1983.

KENNETH R. MASON,
*Secretary.*

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| In the Matter of CERTAIN HAND-OPERATED, GAS-OPERATED WELDING, CUTTING AND HEATING EQUIPMENT AND COMPONENT PARTS THEREOF | Investigation No. 337-TA-132 |

*Notice of Commission Decision To Review Initial Determination and Schedule for Filing Briefs*

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined to review the presiding officer's initial determination denying temporary relief in the above-captioned investigation.

AUTHORITY: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and in sections 210.53 and 210.54 of the Commission's Rules of Practice and Procedure (47 F.R. 25134, June 10, 1982; to be codified at 19 C.F.R. §§ 210.53 and 210.54).

SUPPLEMENTARY INFORMATION: On February 7, 1983, the presiding officer issued an initial determination denying complainant's request for temporary relief. Complainant Victor Equipment Co. and the Commission investigative attorney have petitioned for review of the initial determination pursuant to section 210.54(a) of the Commission's rules.

After examining the petitions for review and a response thereto, the Commission concludes that there are issues warranting review. Specifically, the Commission will review the following questions: (1) whether the temporary relief hearing conducted by the presiding officer violated due process of law as guaranteed by the 5th Amendment; (2) whether the temporary relief hearing violated the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*; (3) whether the overall design of complainant Victor's welding equipment is functional (the parties are specifically requested to brief the issue of whether the Commission should apply the doctrine of "aesthetic functionality"); (4) whether the overall design of Victor's welding equipment has acquired "secondary meaning" (the parties are specifically requested to brief the issue of whether close and deliberate intentional copying raises a rebuttable presumption of secondary meaning under the Commission's decision in *Certain Novelty Glasses,* Inv. No. 337-TA-55, USITC Pub. No. 991 (July 1979), and, if so, whether respondents have rebutted the presumption); (5) whether there is a likelihood that complainant will succeed in establishing "passing off"; and (6) whether the domestic industry will incur "immediate and substantial harm" in the absence of temporary relief. The Commission's review will be limited to the issues listed above. No other issues will be considered. The record on review will be limited to evidence submitted at the temporary relief hearing. Per-

sons submitting briefs are reminded that any arguments must be based on the evidentiary record before the presiding officer.

COMMISSION HEARING ON VIOLATION: The Commission concludes that review of the initial determination as to violation of section 337(e) does not require oral argument in this instance. Accordingly, the Commission will not schedule a hearing on the issue of whether there is reason to believe that there has been a violation of section 337 at this time. Pursuant to section 210.56 of the rules, a party may submit a request for oral argument, which the Commission in its discretion may grant or deny. Any request should state with specificity the reasons that oral argument is appropriate.

COMMISSION HEARING ON REMEDY, BONDING, AND THE PUBLIC INTEREST: If the Commission reverses the presiding officer's determination as to whether there is reason to believe there is a violation of section 337, the Commission will schedule and hold a hearing on the issues of remedy, bonding, and the public interest.

WRITTEN SUBMISSIONS: The parties to the investigation and interested Government agencies are encouraged to file briefs on the issue of whether there is reason to believe that there has been a violation of section 337. Such briefs must be filed not later than the close of business on March 24, 1983.

ADDITIONAL INFORMATION: Persons submitting briefs must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the presiding officer. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Secretary's Office.

Notice of this investigation was published in the Federal Register of October 6, 1982, 47 F.R. 44172.

Copies of the nonconfidential version of the presiding officer's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Warren H. Maruyama, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0375.

By order of the Commission.

Issued: March 9, 1983.

KENNETH R. MASON,
*Secretary.*

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| In the Matter of | |
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| CERTAIN SNEAKERS WITH FABRIC UPPERS AND RUBBER SOLES | Investigation No. 337-TA-118 |

*Notice of Issuance of Exclusion Order*

AGENCY: U.S. International Trade Commission.

ACTION: Issuance of exclusion order.

SUPPLEMENTARY INFORMATION: On February 28, 1983, the Commission unanimously determined with respect to the above-captioned investigation that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation of certain sneakers with fabric uppers and rubber soles into the United States, and in their sale, the effect or tendency of which is to substantially injure an industry, efficiently and economically operated, in the United States. In addition, the Commission determined that a general exclusion order pursuant to subsection (d) of section 337 is the most appropriate remedy for the violation found to exist, that the public-interest factors enumerated in subsection (d) do not preclude the issuance of such an order, and that the amount of the bond under subsection (g) of section 337 should be 266 percent of the entered value of the articles concerned. The Commission Action and Order and the Commission Opinion in support thereof were issued on March 9, 1983.

The notice instituting the investigation and defining its scope was published in the Federal Register on March 9, 1982 (47 F.R. 10103).

The Commission Action and Order, the Commission Opinion, and all other nonconfidential documents on the record of the investigation are available for public inspection Monday through Friday during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471.

FOR FURTHER INFORMATION CONTACT: Catherine R. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0143.

By order of the Commission.

Issued: March 9, 1983.

KENNETH R. MASON,
*Secretary.*

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In the Matter of
CERTAIN CAULKING GUNS } Investigation No. 337-TA-139

NOTICE OF CHANGE OF THE COMMISSION INVESTIGATIVE ATTORNEY

Notice is hereby given that, as of this date, Lynn Levine, Esq., of the Unfair Import Investigations Division will be the Commission Investigative Attorney in the above-cited investigation instead of Jeffrey Neeley, Esq.

The Secretary is requested to publish this Notice in the Federal Register.

Dated: March 8, 1983.

DAVID I. WILSON,
*Chief,*
*Unfair Import Investigations Division.*

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In the Matter of
CERTAIN HAND-OPERATED, GAS-OPERATED WELDING, CUTTING AND HEATING EQUIPMENT AND COMPONENT PARTS THEREOF } Investigation No. 337-TA-132

*Notice of Prehearing Conference and Hearing*

Notice is hereby given that a prehearing conference will be held in this case at 9:00 a.m. on April 18, 1983 in Room 201, Waterfront Center, 1010 Wisconsin Avenue, N.W., Washington, D.C., and the hearing will commence immediately thereafter.

The purpose of the prehearing conference is to review the trial memoranda submitted by the parties, to stipulate exhibits into the record, and to discuss any questions raised by the parties relating to the hearing.

The Secretary shall publish this notice in the Federal Register.

Issued: March 8, 1983.

JANET D. SAXON,
*Administrative Law Judge.*

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| In the Matter of CERTAIN CT SCANNER AND GAMMA CAMERA MEDICAL DIAGNOSTIC IMAGING APPARATUS | Investigation No. 337-TA-123 |

*Notice of Change of the Commission Investigative Attorney*

Notice is hereby given that, as of this date, Patricia Ray, Esq., of the Unfair Import Investigations Division will be the Commission Investigative Attorney in the above-cited investigation instead of John Bryant, Esq.

The Secetary is requested to publish this Notice in the Federal Register.

Dated: March 8, 1983.

DAVID I. WILSON,
*Chief,*
*Unfair Import Investigations Division.*

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| In the Matter of CERTAIN MARINE HARDWARE AND ACCESSORIES | Investigation No. 337-TA-136 |

*Notice of Change of the Commission Investigative Attorney*

Notice is hereby given that as of this date, Arthur Wineburg, Esq., of the Unfair Import Investigations Division, will be the Commission investigative attorney in the above-cited investigation instead of Oreste Russ Pirfo, Esq.

The Secretary is requested to publish this notice in the Federal Register.

Dated: February 24, 1983.

DAVID I. WILSON,
*Chief,*
*Unfair Import Investigations Division.*

# Index

## U.S. Customs Service





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